

1 BILL NO.

J-80-03-19

2  
3 Special ORDINANCE NO.

J-30-80

4 AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE  
5 OF \$825,000 INDUSTRIAL DEVELOPMENT REVENUE BONDS  
6 OF THE CITY OF FORT WAYNE, INDIANA, TO FINANCE  
7 THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF  
8 CERTAIN ECONOMIC DEVELOPMENT FACILITIES LOCATED  
9 IN THE CITY: AUTHORIZING THE EXECUTION OF A  
10 FINANCING AGREEMENT: PROVIDING FOR THE LOAN OF  
11 THE PROCEEDS OF THE BONDS TO KEEBLER COMPANY:  
12 AUTHORIZING AN INDENTURE OF TRUST APPROPRIATE FOR  
13 THE PROTECTION AND DISPOSITION OF THE REVENUES FROM  
14 SUCH FACILITIES: AUTHORIZING THE EXECUTION OF A  
15 BOND PURCHASE AGREEMENT WITH THE UNDERWRITER OF THE  
16 BONDS: AND AUTHORIZING THE TERMS AND SALE OF SAID  
17 BONDS.

18 WHEREAS, the City of Fort Wayne, Indiana (hereinafter  
19 called the "City") is a municipal corporation and political sub-  
20 division of the State of Indiana and by virtue of I.C. 18-6-4.5,  
21 as amended (hereinafter called the "Act"), is authorized and  
22 empowered to adopt this ordinance (the "Bond Ordinance") and  
23 to carry out its provisions; and

24 WHEREAS, Keebler Company (the "Company") is a corporation  
25 duly organized and existing under and by virtue of the laws of  
26 Delaware and duly qualified to conduct business in the State of  
27 Indiana; and

28 WHEREAS, the City has agreed to loan the proceeds of its  
29 industrial revenue bonds to the Company for the acquisition,  
30 construction and equipping of economic development facilities in  
31 the City, with the proceeds of its industrial development revenue  
32 bonds; and

33 WHEREAS, the Fort Wayne Economic Development Commission  
34 has performed all action required of it by the Act preliminary to  
35 the adoption of this Bond Ordinance and has approved and forwarded  
36 to this Common Council the forms of (1) Indenture of Trust (the  
37 "Indenture:") dated as of March 1, 1980, between the City of  
38 Port Wayne and Fort Wayne National Bank, in Fort Wayne, Indiana  
(the "Trustee"), containing a form of industrial development  
revenue bond, (2) Financing Agreement (the "Agreement") dated as  
of March 1, 1980, between the City and the Company, (3) Bond

1 Purchase Agreement (the "Bond Purchase Agreement") dated as of  
2 March 1, 1980 between the City and the Robinson-Humphrey Company,  
3 Inc., as underwriters, and (4) this Bond Ordinance;

4 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
5 THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

6 Section 1. Findings; Public Benefits. The Common Council  
7 of the City hereby finds and determines that the land, building  
8 or buildings, equipment and facilities in connection therewith  
9 (the "Project") to be acquired, constructed and equipped with  
10 the proceeds of the Industrial Development Revenue Bonds herein  
11 authorized are "economic development facilities" as that phrase  
12 is used in the Act; that acquisition, construction and equipping of  
13 the Project will increase employment opportunities and the diversi-  
14 fication of industry in the City, will improve and promote the  
15 economic stability, development and welfare of the area in and  
16 near the City and will encourage and promote the expansion of  
17 industry, trade and commerce in the area in and near the City and  
18 the location of other new industries in such area; and that the  
19 public benefits to be accomplished by this Bond Ordinance, in  
20 tending to overcome insufficient employment opportunities and  
21 insufficient diversification of industry, are greater than the  
22 cost of public facilities(as that phrase is defined in the Act)  
23 which will be required by the Project.

24 Section 2. Authorization of Industrial Development Revenue  
25 Bonds. In order to pay a portion of the cost of acquiring, con-  
26 structing and equipping the Project, there are hereby authorized  
27 to be issued, sold and delivered \$825,000 aggregate principal  
28 amount of Industrial Development Revenue Bonds (Keebler Company  
29 Project), Series 1980 of the City (the "Series 1980 Bonds").  
30 Any additional costs of the Project will be paid for by the  
31 Company unless paid for with the priceeds of additional parity  
32 bonds (the "Additional Bonds") as identified in the Indenture.

33 Section 3. Terms for the Series 1980 Bonds. The total  
34 principal amount of Series 1980 Bonds that may be issued is hereby  
35 expressly limited to \$825,000; provided that the Additional Bonds  
36

1 may be issued upon the terms and conditions and for the purposes  
2 provided in the Indenture and in the Agreement.

3 \* \* \*

4 The Series 1980 Bonds shall be issuable in coupon form  
5 registrable as to principal only in the denomination of \$500  
6 each or in fully registered form in the denomination of \$500  
7 or any integral multiple thereof, shall bear interest until paid  
8 at the rate of 8 5/8% per annum payable March 1 and September 1  
9 of each year beginning September 1, 1980, and shall mature on  
10 March 1, 2005. Each Series 1980 Bond authenticated prior to  
11 September 1, 1980, shall be dated March 1, 1980; otherwise, each  
12 Series 1980 Bond shall be dated as of the interest payment date  
13 to which interest has been paid next preceding the date on which  
14 it is authenticated unless it is authenticated on an interest  
15 payment date, in which case it shall be dated as of such date.  
16 Principal and interest and premium, if any, shall be payable at  
17 the principal office of the Trustee in Fort Wayne, Indiana (except  
18 as otherwise provided in the Indenture).

19 The Series 1980 Bonds shall be initially issued as a  
20 single fully-registered Bond in the denomination of \$825,000  
21 number R-1 and shall be executed on behalf of the City by its  
22 Mayor with his manual signature and attested by the manual  
23 signature of the City Clerk, and the corporate seal of the City  
24 shall be impressed thereon.

25 The Bonds are subject to mandatory sinking fund redemption  
26 on March 1 of each of the years and in the principal amounts as  
27 follows:

<u>Year</u>	<u>Principal Amount</u>
1996	\$ 25,000
1997	25,000
1998	25,000
1999	50,000
2000	50,000
2001	62,500
2002	87,500
2003	100,000
2004	200,000
2005	200,000

34 \* \* \*

1           The Series 1980 Bonds shall be executed, shall be in  
2 such form, shall have such redemption provisions, and shall be  
3 subject to such other terms and conditions as set forth in the In-  
4 denture. The Series 1980 Bonds and the interest thereon do not  
5 and shall never constitute an indebtedness of or a charge against  
6 the general credit or taxing power of the City, but are limited  
7 obligations of the City payable solely from revenues and other  
8 amounts derived from the Agreement and shall be secured as  
9 provided in the Indenture. Forms of the Agreement and Indenture  
10 are before this meeting and are by this reference incorporated  
11 in this Bond Ordinance, and the City Clerk is hereby directed to  
12 insert them into the minutes of the Common Council and to keep  
13 them on file.  
14

15           Section 4. Sale of the Series 1980 Bonds. The Mayor and  
16 City Clerk of the City are hereby authorized and directed to sell  
17 the Series 1980 Bonds to or upon the order of The Robinson-  
18 Humphrey Company, Inc. (the "Underwriter") at a price of 98.5275%  
19 of principal, plus accrued interest to the date of delivery and  
20 payment. The form of Bond Purchase Agreement providing the terms  
21 and conditions of the sale of the Series 1980 Bonds is before  
22 this meeting and is by reference incorporated in this Bond Ordinance,  
23 and the City Clerk is hereby directed to insert it into  
24 the minutes of the Common Council and to keep it on file.

25           Section 5. Indenture. In order to secure the payment  
26 of principal of and interest on the Series 1980 Bonds, the Mayor  
27 and City Clerk shall execute, acknowledge and deliver, in the name  
28 of and on behalf of the City, an Indenture of Trust in substantial-  
29 ly the form submitted to this Common Council, which is hereby  
30 approved in all respects.

31           Section 6. Agreement. In order to provide for the use  
32 of the proceeds of the Series 1980 Bonds to acquire and construct  
33 the Project and the payment by the Company of an amount sufficient  
34 to pay the principal of and premium, if any, and interest on the  
35 Series 1980 Bonds, the Mayor and the City Clerk shall execute,  
36 acknowledge and deliver in the name and on behalf of the City  
37  
38

an Agreement in substantially the form submitted to this  
Common Council, which is hereby approved in all respects.

Section 7. General. The Mayor and City Clerk be and  
they are each hereby authorized and directed, in the name and  
on behalf of the City, to execute any and all instruments, perform  
and all acts, approve any and all matters, and do any and  
all things deemed by them, or either of them, to be necessary or  
desirable in order to carry out the purposes of this Bond Ordinance  
(including the preambles hereto), the acquisition and improvement  
of the Project by the Company, the issuance and the sale of the  
Series 1980 Bonds, securing the Series 1980 Bonds under the  
Indenture and the underwriting of the Series 1980 Bonds by the  
Underwriter.

Section 8. Effective Date. This Bond Ordinance shall  
be in full force and effect immediately upon its adoption by the  
Common Council and approval by the Mayor.

Presented by Councilman James R. H.

Passed in open Council this 25th day of March, 1980.

\_\_\_\_\_  
President of the Common Council

ATTEST:

\_\_\_\_\_  
City clerk

Presented to me by the Mayor this \_\_\_\_ day of March, 1980,  
at the hours of \_\_\_\_ o'clock \_\_.M.

\_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of March, 1980, at the hour of  
\_\_\_\_ o'clock \_\_.M.

James R. H.  
Mayor

ATTEST:

approved as to form & legality:  
J. E. Hoffmann

Read the first time in full and on motion by Stier,  
seconded by Stier, and duly adopted, read the second time  
by title and referred to the Committee Finance (and the City  
Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,  
Indiana, on \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 3-25-80

Charles W. Westerman  
CHARLES W. WESTERMAN  
CITY CLERK

Read the third time in full and on motion by Stier,  
seconded by Stier, and duly adopted, placed on its  
passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 4-8-80

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ZONING MAP) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~)  
(~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. 2-30-80  
on the 8th day of April, 19 80.

ATTEST:

(SEAL)

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Theresa J. Schmidt  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 9th day of April, 19 80, at the hour of  
11:30 o'clock A. M., E.S.T.

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 9th day of April  
1980, at the hour of 4 o'clock P. M., E.S.T.

Winfield C. Moses, Jr.  
WINFIELD C. MOSES, JR.  
MAYOR

BILL NO. S-80-03-19

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN  
ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$825,000 INDUSTRIAL  
DEVELOPMENT REVENUE BONDS OF THE CITY OF FORT WAYNE, INDIANA, TO  
FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN  
ECONOMIC DEVELOPMENT FACILITIES LOCATED IN THE CITY: AUTHORIZING  
THE EXECUTION OF A FINANCING AGREEMENT: PROVIDING FOR THE LOAN OF  
THE PROCEEDS OF THE BONDS TO KEEBLER COMPANY: AUTHORIZING AN  
INDENTURE OF TRUST APPROPRIATE FOR THE PROTECTION AND DISPOSITION  
OF THE REVENUES FROM SUCH FACILITIES: AUTHORIZING THE EXECUTION OF  
A BOND PURCHASE AGREEMENT WITH THE UNDERWRITER OF THE BONDS: AND  
AUTHORIZING THE TERMS AND SALE OF SAID BONDS  
HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

JAMES S. STIER, CHAIRMAN

MARK GIAQUINTA, VICE CHAIRMAN

BEN EISBART

PAUL M. BURNS

DONALD J. SCHMIDT

*Jim Stier*  
*Mark Giaquinta*  
*Ben Eisbart*  
*Paul M. Burns*  
*Donald J. Schmidt*

4-8-80  
DATE 4-8-80 CONCURRED IN  
CHARLES W. WESTERMAN, CITY CLERK



## THE CITY OF FORT WAYNE

March 20, 1980

Mrs. Vivian Schmidt  
City Councilwoman  
City-County Building  
Fort Wayne, Indiana 46802

Re: Keebler Company Project  
Economic Development Commission Revenue Bonds


Dear Mrs. Schmidt:

On March 18, 1980, the Economic Development Commission passed a consent resolution for Keebler Company approving the financing documents for an \$825,000 issue.

I am enclosing for the Common Council consideration, a proposed Bond Ordinance and a copy of the consent resolution passed by the EDC.

If the Common Council has any questions concerning this issue, please feel free to contact me at 489-6710.

Respectfully submitted,

  
Wayne V. Simerman  
President, Economic Development  
Commission

Enclosures





Fort Wayne, Indiana

March 18, 1980

The Fort Wayne Economic Development Commission met in special session duly called in accordance with the rules of the Commission at 11:30 o'clock A.M., local time at Room 128 of the City-County Building in the City of Fort Wayne, Indiana. The meeting was called to order with Wayne P. Simerman President, presiding, and the following members of the Commission present:

Wayne P. Simerman, Jack Gren, Sidney Sheray, City Attorney

John Hoffman and Special Counsel, William N. Salin

Absent: Louis Dinwiddie and Quentin Ponder

\* \* \*

The Secretary of the Commission reported that notice of a public hearing on a proposed financing of economic development facilities had, according to law and as directed by the Commission, been duly given by publication of appropriate notice on March 14, 1980, in the News-Sentinel, a newspaper having a general circulation within the City of Fort Wayne, Indiana. This being the time and place specified in said notice for the conduct of a public hearing on the proposed financing of economic development facilities for Keebler Company, the President announced that any resident, taxpayer or other interested person attending the

hearing would now be given an opportunity to express his views for or against said proposed financing and the proposal for the City (a) to issue Industrial Development Revenue Bonds of the City in the principal amount of \$825,000 for the purpose of financing the cost of such economic development facilities, (b) to loan the bond proceeds for Keebler Company's acquisition, construction and equipping of the economic development facilities, (c) to secure the bonds by the execution of an indenture of trust with Fort Wayne National Bank, as Trustee, and (d) to sell the bonds to The Robinson-Humphrey Company, Inc., as underwriter. The President also announced that the plan commission having jurisdiction where the facilities are located had, on March \_\_, 1980, been furnished the report on such economic development facilities approved by the Commission. The President stated that since the facilities will not employ more than 100 persons, no notice had been sent to the school superintendent having jurisdiction where the facilities are located.

After all residents, taxpayers and other interested persons who appeared at the hearing and desired to do so had expressed their views for or against the proposed financing, Commissioner Gren introduced and caused to be read a resolution entitled "Resolution approving proposed financing of economic development facilities". Commissioner Sheray seconded the motion and after due consideration thereof by the Commission, the President put the question in motion for the adoption of said resolution, and the roll being called, the following named members voted:

AYE: Wayne P. Simerman  
Jack Gren  
Sidney Sheray

NAY: (none)

Whereupon the President declared said resolution duly adopted as follows:

RESOLUTION approving proposed financing of economic development facilities.

WHEREAS the Fort Wayne Economic Development Commission (the "Commission") has heretofore made a report making certain findings with respect to the proposed financing by the City of Fort Wayne, Indiana (the "City") for Keebler Company (the "Company"), of economic development facilities located in the City; and

WHEREAS the plan commission having jurisdiction where the facilities are to be located has been furnished such report of the Commission; and

WHEREAS this Commission has held a public hearing on the proposed financing and desires to make a record by this resolution that the proposed financing complies with the purposes and provisions of IC 18-6-4.5 and to approve the form and terms of such financing;

NOW, THEREFORE, Be It Resolved by the Fort Wayne Economic Development Commission, as follows:

1. The proposed financing of economic development facilities by the City of Fort Wayne, Indiana, for the Company is hereby found to be of benefit to the welfare of the City and to comply with the purposes and provisions of IC 18-6-4.5.

2. The economic development facilities will not have an adverse competitive effect on similar facilities already constructed or operating in or near the City.

3. The Commission approves the proposed financing and the proposed form and terms of:

(a) \$825,000 Industrial Development Revenue Bonds maturing 25 years from date and bearing interest at the rate of 8 5/8% per annum proposed to be issued by the City for the purpose of lending the proceeds thereof to the Company for paying costs of such economic development facilities;

(b) Financing Agreement whereby the City loans the bond proceeds to the Company to acquire, construct and equip economic development facilities and the repayment of which is upon terms sufficient to retire, and is the source of payment of, the bonds and interest thereon;

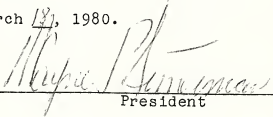
(c) Indenture of Trust from the City to Fort Wayne National Bank, Fort Wayne, Indiana, as Trustee, securing said bonds;

(d) Bond Ordinance authorizing the issuance of such bonds and approving such Financing Agreement and Indenture of Trust; and

(e) Bond Purchase Agreement whereby the bonds will be sold to The Robinson-Humphrey Company, Inc., as underwriter of the bonds.

4. The Secretary of the Commission is hereby authorized and directed to transmit this resolution and all other instruments and information pertaining to the proposed financing to the Common Council of the City.

Passed and approved March 18, 1980.

  
\_\_\_\_\_  
President

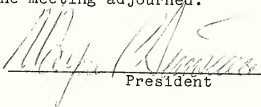
ATTEST:

  
\_\_\_\_\_  
Secretary

\* \* \*

(Other Business)

Upon motion and vote the meeting adjourned.

  
\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_  
Secretary


C E R T I F I C A T E

STATE OF INDIANA     )  
                          ) SS  
COUNTY OF ALLEN     )

I, the undersigned, the duly qualified and acting Secretary of the Fort Wayne Economic Development Commission, do hereby certify that attached is a true and correct copy of excerpts from the minutes of the March 18, 1980 meeting of the Commission insofar as such minutes relate to the adoption of the resolution set forth in such minutes, and I do further certify that the copy of the resolution appearing in such minutes is a full, true and correct copy of the resolution adopted at such meeting, all as appears in the records of the Commission in my custody as Secretary of the Commission.

I further certify that attached hereto is a true and correct copy of the Waiver of Notice of Special Meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name this March 18, 1980.

  
\_\_\_\_\_  
Secretary  
Fort Wayne Economic Development Commission

EMERGENCY APPROPRIATION ORDINANCE

WHEREAS, certain extraordinary emergencies have developed since the adoption of the existing annual budget, so that it is now necessary to appropriate more money than was appropriated in the annual budget; now therefore, to meet such extraordinary emergencies:

Sec. 1. Be it ordained by the Common Council of the City of Fort Wayne, Allen County, Indiana, that for the expenses of said municipal corporation the following additional sums of money are hereby appropriated and ordered set apart out of the several funds herein named and for the purposes herein specified, subject to the laws governing the same:

*6-05-80*

	AMOUNT REQUESTED	AMOUNT APPROPRIATED
BILL NO. <u>A-80-03-18</u>	<u>\$ 115,000.00</u>	<u>\$ 115,000.00</u>

There is hereby appropriated from the unappropriated and unobligated balance of the Aviation General Fund No. 120 to the following items of the 1980 Budget of the Board of Aviation Commissioners:

The sum of \$35,000.00 to Account No. 120-4267, Consultant Fees to used for preliminary planning estimating and design for proposed new Air Wisconsin Operations Terminal  
The sum of \$30,000.00 to Account No. 120-4724, Smith Field Capital, to pay a sanitary sewer assessment  
The sum of \$50,000.00 to Account No. 120-4713, Ground and Surface Improvements, Baer Field, to contribute toward the cost of a sanitary sewer extension that would serve the west side of Baer Field.

*6-05-80*

	AMOUNT REQUESTED	AMOUNT APPROPRIATED
BILL NO. <u>A-80-03-18</u>	<u>\$ 115,000.00</u>	<u>\$ 115,000.00</u>

That the unappropriated and unobligated balance of the Aviation General Fund No. 120 is hereby reduced in the amount of \$115,000.00.

An emergency exists for the appropriation of additional funds to the 1980 Budget of the Board of Aviation Commissioners, for which adequate funds exist in the Aviation General Fund No. 120.

ADOPTED THIS 4th DAY OF April, 1980.

AYES

NAYS

Paul M. Burns PAUL M. BURNS

BEN EISBART BEN EISBART

Mark E. GiaQuinta MARK E. GIAQUINTA

John Nuckols JOHN NUCKOLS

Donald J. Schmidt DONALD J. SCHMIDT

Vivian G. Schmidt VIVIAN G. SCHMIDT

Roy J. Schomburg ROY J. SCHOMBURG

James S. Stier JAMES S. STIER

Samuel J. Talarico SAMUEL J. TALARICO

ATTEST:

Charles W. Westerman  
CHARLES W. WESTERMAN  
CITY CLERK

APR 11 1980

LE OF ORDINANCE Special Ordinance

DEPARTMENT REQUESTING ORDINANCE Economic Development Commission

*280-03-19*

SYNOPSIS OF ORDINANCE Ordinance authorizing the issuance and sale of

\$825,000 industrial development revenue bonds to finance acquisition,  
construction and equipping of Economic Development facilities.

(Inducement Resolution previously

approved by Council)

EFFECT OF PASSAGE To enable Keebler Company to proceed with construction of  
facilities

EFFECT OF NON-PASSAGE Non-construction of facilities.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$825,000 Industrial Development  
Revenue Bonds

ASSIGNED TO COMMITTEE Finance



MAR 11 1980

---

MORTGAGE AND SECURITY AGREEMENT

KEEBLER COMPANY,  
Mortgagor

AND

CITY OF FORT WAYNE, INDIANA,  
Mortgagee

Dated as of March 1, 1980

---

The interest of the City of Fort Wayne, Indiana, in this Mortgage and Security Agreement and amounts receivable hereunder have been assigned to Fort Wayne National Bank, as Trustee under the Indenture of Trust dated as of March 1, 1980, from the City of Fort Wayne, Indiana.

This instrument prepared by:

Wendy C. Binder  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

MORTGAGE AND SECURITY AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
Parties	1
Preambles	1
Granting Clauses	2
1. Maintenance of Premises	5
2. Payment of Taxes, Charges, Etc.	5
3. Maintenance of Insurance	5
4. Title Insurance	6
5. Condemnation	6
6. Disposition of Equipment	7
7. Performance or Payment by Trustee	8
8. Defaults	8
9. Remedies on Default	9
10. Additional Remedies	11
11. Inspection of Premises	12
12. Remedies Cumulative	12
13. Agreement to Pay Costs, Attorney's Fees	12
14. Provisions Severable	12
15. Successors and Assigns	13
16. Waiver, Discharge to be in Writing	13
17. Warranty of Title	13
Testimonium	13
Signatures and Seals	13

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made as of March 1, 1980, between KEEBLER COMPANY, a Delaware corporation, with its principal place of business at One Hollow Tree Lane, Elmhurst, Illinois 60126 (the "Mortgagor"), and the City of Fort Wayne, Indiana, a municipal corporation of the State of Indiana, having its principal office at City-County Building, Main Street, Fort Wayne, Indiana 46802 (the "Mortgagee"),

### W I T N E S S E T H:

THAT WHEREAS, this Mortgage is made in consideration of the principal sum of Eight Hundred Twenty-Five Thousand Dollars (\$825,000) which is the proceeds of the Industrial Development Revenue Bonds (Keebler Company Project) Series 1980 dated as of March 1, 1980 (the "Bonds") of the Mortgagee; and the Bond proceeds are being received by the Mortgagor from the Mortgagee pursuant to a Financing Agreement dated as of March 1, 1980, between the Mortgagor and the Mortgagee (the "Financing Agreement") and such Bond proceeds will be used by the Mortgagor to acquire certain real estate and construct and equip warehouse and distribution facilities thereon, which Financing Agreement, together with the loan repayment installments due thereunder, have been assigned by the Mortgagee to Fort Wayne National Bank, as Trustee (the "Trustee") under an Indenture of Trust dated as of March 1, 1980 (the "Indenture"); and

WHEREAS, in order to evidence this Mortgage, the Mortgagor has executed and delivered to the Mortgagee its Promissory Note (the "Note") of even date herewith and the Note in the principal sum of \$825,000 is payable in 10 consecutive annual principal installments (except that the last principal installment shall be the entire unpaid principal amount) on March 1, 1996 and annually thereafter on March 1 of each year through and including March 1, 2005, with interest on the unpaid principal balance at the rate of eight and five eighths percent (8-5/8%) per annum, computed on the basis of a year of 360 days consisting of twelve 30-day months; and

WHEREAS, it is necessary that the Mortgagor execute and deliver this instrument for the purpose of securing the Note and the Bonds;

NOW, THEREFORE, the Mortgagor to secure the payment of the principal of and interest on the Note in accordance with the terms and provisions thereof, and the payment of any other sums

therein provided for, and the observance and performance of the covenants and agreements contained herein or in the Note or in any other instrument or document securing the Note or in the Financing Agreement and the other indebtedness which this Mortgage by its terms secures, and also in consideration of the sum of Ten Dollars in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, mortgage, warrant, assign and pledge unto Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V and VI below, all of same being collectively referred to herein as the "Premises".

#### GRANTING CLAUSE I

That certain real estate lying in the City of Fort Wayne, County of Allen and State of Indiana, more particularly described in Schedule I attached hereto and made a part hereof.

#### GRANTING CLAUSE II

All buildings and improvements of every kind and description now existing or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of such improvements now existing or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the said real estate, and all fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, communication equipment, all gasoline storage tanks, pumps and fixtures; and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, use and enjoyment of the said real estate and the buildings and improvements now or hereafter located thereon for their intended purposes; all other fixtures, machinery, apparatus and equipment of every kind and nature whatsoever now or hereafter acquired by Mortgagor and attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now existing or hereafter located thereon, including those items described in Schedule II attached hereto and made a part hereof, BUT SPECIFICALLY EXCLUDING those items of machinery, fixtures, furniture, furnishings, apparatus and equipment not

acquired by the Mortgagor out of the proceeds of the Bonds; and all renewals or replacements of any of the foregoing or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by said Mortgagor and placed by it on the real estate shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The address of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning of this Agreement.

#### GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, franchises and appurtenances belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale) together with the right, but not the obligation to collect, receive and receipt for all such rents and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable, provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases nor shall such obligations be imposed upon Mortgagee.

#### GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at

any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

#### GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf.

#### GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

SUBJECT HOWEVER, as to all property or rights in property at any time subject to the lien hereof (whether now owned or hereafter acquired), to liens described in Schedule III hereto ("Permitted Encumbrances").

TO HAVE AND TO HOLD the Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, assigned, pledged and in which a security interest is granted, or intended so to be unto Mortgagee, its successors and assigns, forever; provided, however, that this Mortgage is upon the express condition that if Mortgagor shall pay or cause to be paid all indebtedness hereby secured and shall keep, perform and observe all and singular the covenants and promises in the Note and in this Mortgage or in any other instrument or document securing the Note or in the Financing Agreement expressed to be kept, performed and observed by Mortgagor, and if all of the Bonds and interest and premium, if any, thereon are paid, or provision therefor made as provided in the Indenture, then this

Mortgage and the estate and rights hereby granted shall cease, determine and be void and this Mortgage shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Mortgagor shall, at its own expense, (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the real estate which may become damaged or destroyed; (b) keep the Premises in good condition and repair, without waste and free from charges, encumbrances, mechanics' or other liens or claims for liens not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien, charge or encumbrance on the Premises, and upon request exhibit satisfactory evidence of the discharge of same to Trustee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said real estate; (e) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof; (f) without prior written consent of Trustee, which shall not be unreasonably withheld, not make any material alteration in said Premises which would impair the value or utility of the Premises except as required by law or municipal ordinance; and; (g) promptly notify Trustee of any damage or destruction on the Premises, of any pending or threatened proceeding for the taking (by eminent domain or otherwise) of any part thereof, of any notice from any governmental authority alleging violation of any building code, zoning ordinance or other governmental requirement or of any other event or condition which might impair the value of the Premises or its use for its intended purpose.

2. Mortgagor shall pay before any penalty attaches all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges against the Premises when due, and shall upon written request furnish to Trustee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

3. Mortgagor shall keep the Premises insured against such risks as are customarily insured against by businesses of like size and type and similarly located. Unless Mortgagor shall choose to be a self-insurer with respect to worker's compensation coverage, Mortgagor shall also maintain worker's compensation insurance respecting all employees of the Company in such amount as is legally required or customarily carried by

like organizations engaged in like activities, and of like size and liability exposure. The proceeds of insurance carried pursuant to this Section shall be paid to and received by Mortgagor and shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds were paid.

4. Mortgagor has obtained and there is in full force and effect on the date of the execution and delivery hereof a standard ALTA Mortgage Title Insurance Policy (Loan Policy - 1970), or a commitment to issue such a policy, issued by a title insurance agency authorized to issue title insurance in the State of Indiana in the amount of \$825,000 showing good title to the real estate described in Schedule I hereto in the Mortgagor, subject only to Permitted Encumbrances, and insuring the Trustee for the benefit of the holders of the Bonds from time to time outstanding, against loss or damage, not exceeding the amount of such policy, sustained by reason of the Mortgage not being a first and paramount lien upon such real estate, subject only to Permitted Encumbrances. Any proceeds payable to the Mortgagor, the Mortgagee or the Trustee under such policy shall be paid over to the Trustee and used to reduce the indebtedness secured hereby.

5. Mortgagor acknowledges that Condemnation Awards have been assigned to Mortgagee, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor. Mortgagor covenants and agrees that Mortgagor will give Mortgagee and Trustee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Trustee copies of any and all papers served in connection with any such proceedings. So long as no event of default has occurred and is continuing under this Mortgage or the Financing Agreement, Trustee shall, at the direction of Mortgagor, either apply any Condemnation Awards at any time coming into its hands to the reduction of the indebtedness hereby secured or shall release same for restoration of or substitutions for the property so taken. Mortgagor will notify Trustee within 30 days after receipt by Trustee of any Condemnation Award whether Mortgagor intends to restore or substitute property so taken or cause the Condemnation Award to be applied to the reduction of the indebtedness hereby secured. If Mortgagor shall fail to so notify Trustee, then Trustee may, at its sole discretion, either apply such Condemnation Award to the reduction of the indebtedness hereby secured or may release same for restored or substitute property on such terms as it shall elect. Mortgagor hereby irrevocably constitutes and appoints Trustee its true and



lawful attorney in fact to endorse the name of Mortgagor or any commercial paper evidencing any Condemnation Award. Any Condemnation Award remaining after completion of restoration or substitution of any property shall be applied to the reduction of the indebtedness hereby secured.

6. In any instance where the Mortgagor in its sound discretion determines that any items of equipment or machinery subject to the lien and security interest hereof have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Mortgagor may remove and dispose of such items of equipment or machinery from the Premises and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part), provided that the Mortgagor shall: (a) substitute and install anywhere on the Premises other machinery or equipment having equal or greater utility (but not necessarily having the same function) in the operation of the Premises (provided such removal and substitution shall not impair operating utility), all of which substituted machinery or equipment shall be free of all liens and encumbrances other than the lien hereof but shall become a part of the Premises and subject to the lien hereof; or (b) need not make any such substitution and installation, provided (i) that in the case of the sale of any such equipment or machinery or in the case of the scrapping thereof, the Mortgagor shall pay into the Bond Fund created by the Indenture the proceeds from such sale or the scrap value thereof, as the case may be, (ii) that in the case of the trade-in of such equipment or machinery for other equipment or machinery not to be installed on the Premises, the Mortgagor shall pay into said Bond Fund the amount of the credit received by it in such trade-in, and (iii) that in the case of any other disposition thereof the Mortgagor shall pay into said Bond Fund an amount equal to the original cost thereof paid from Bond proceeds less depreciation at rates calculated in accordance with generally accepted accounting practices. In the event that the Mortgagor prior to such removal of items of equipment or machinery from the Premises has acquired and installed machinery or equipment with its own funds which has become part of the Premises, the Mortgagor may take credit to the extent of the amount so spent by it against the requirement that it either substitute and install other machinery and equipment having equal or greater value or that it make payment into said Bond Fund. The Mortgagor will pay any costs (including counsel fees) incurred in subjecting to the lien of this Mortgage and the Indenture any items of machinery or equipment that under the provisions of this paragraph are to become a part of the Premises. The Mortgagor will not remove, or permit the removal of, any of equipment or machinery secured hereby from the Premises except in accordance with the provisions of this paragraph.

7. In case Mortgagor shall fail to perform any covenants herein contained, Trustee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Trustee to protect the Premises and the lien hereof, plus reasonable compensation to Trustee for each matter concerning which action herein authorized may be taken shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a rate per annum equal to the rate of interest announced by the Trustee from time to time for 90-day unsecured loans at its banking house in Fort Wayne, Indiana to its most credit-worthy commercial customers (the "Prime Rate"). Trustee shall be subrogated to all rights, claims and liens of any party whose debt is discharged pursuant to this Section 7. Inaction of Trustee shall never be considered as a waiver of any right accruing to it on account of any default hereunder on the part of the Mortgagor. Trustee in making any payment hereby authorized may do so according to any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

8. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms hereof and of the Note. At the option of Trustee and without notice to Mortgagor, all unpaid indebtedness secured hereby shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable (a) in the case of default for 5 days after written notice thereof by the Trustee in making payment of any installment of interest on the Note, in case of any default in making payment of any installment of principal or in making payment of any other sum due hereunder, or (b) in case Mortgagor shall, without the prior written consent of Trustee not to be unreasonably withheld, sell, assign, transfer or lease the real estate subject hereto, or any portion thereof or interest therein, or contract or agree so to do, or (c) when an event of default shall occur in the performance or observance of any other agreement of the Mortgagor herein contained or contained in the Note or any instrument or document providing collateral security therefor or in the Financing Agreement, or (d)

Mortgagor abandons the Premises, or (e) Mortgagor shall become bankrupt or insolvent or proceedings under any bankruptcy, insolvency, arrangement or adjustment proceedings or proceedings under any bankruptcy, insolvency or similar law shall be instituted or commenced by or against Mortgagor or (f) proceedings shall be commenced to foreclose or otherwise realize upon any lien, charge or encumbrance on the Premises or any part hereof.

9. When the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have, in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements, the following rights and remedies:

(a) Mortgagee may, by written notice to Mortgagor declare the Note and all unpaid indebtedness of Mortgagor hereby secured, including premium, if any, and interest accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Mortgagee shall, with respect to any part of the Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Indiana, including without limitation the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to the Mortgagor/Debtor at its address set forth above at least 10 days prior to the sale or other event for which such notice is required. The proceeds of any sale or realization upon any such property shall be applied to the payment of the indebtedness hereby secured, after first deducting therefrom any expenses for retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred by the Mortgagee or Trustee in connection therewith. If any deficiency shall result after such application, then Mortgagor shall be and remain liable therefor and shall immediately pay the same to Trustee.

(c) Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage by action.

(d) Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Premises, to the extent permitted by applicable law, be entitled to have a receiver appointed of all or any part of the Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom and income, rents, issues and profits accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee or Trustee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee or Trustee may deem to be reasonably necessary to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Premises, all of which expenditures shall become so much additional indebtedness hereby secured and be immediately due and payable with interest thereon at the Prime Rate in effect from time to time from the date of expenditure until paid. Mortgagee or the Trustee may become the purchaser at any foreclosure sale if the highest bidder.

(f) If at any foreclosure proceeding the Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor for the amount of such deficiency; and Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Premises and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

(g) Upon the happening of any event of default, Mortgagor in furtherance of, and not by way of limitation

of, the Granting Clauses of this Mortgage, hereby bargains, sells, assigns and sets over to Mortgagee all rents, issues and profits of the Premises, which, whether before or after foreclosure or during the period of redemption, until the full and complete payment of said indebtedness and performance of all obligations, covenants or agreements hereunder, shall accrue and be owing for the use and occupation of the Premises, or of any part thereof. For the purpose aforesaid, Mortgagor does hereby constitute and appoint Trustee its attorney in fact irrevocably in its name to receive, collect and receipt for all sums due or owing for such use, rents and occupation, as the same may accrue (and for such purpose Mortgagor does hereby irrevocably constitute and appoint Trustee its true and lawful attorney in fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Mortgagor irrevocably acknowledging that any payment made to Trustee hereunder shall be a good receipt and acquittance against Mortgagor to the extent so made); and out of the amount so collected to pay and discharge all unpaid indebtedness hereby secured. For the purpose aforesaid, Trustee may enter and take possession of the Premises and manage and operate the same and take any action which, in Trustee's judgment, is necessary or proper to conserve the value of the Premises. Trustee may also take possession of, and for these purposes use, any and all personal property contained in the Premises and used by the Mortgagor in the rental or leasing thereof or any part thereof. The right to enter and take possession of the Premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Trustee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expense (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Trustee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Trustee.

10. Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension, exemption or redemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the sale of the Premises, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. In the event of any

sale made under or by virtue of this instrument, the whole of the Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor hereby waives any and all rights of the redemption from sale under any order or decree of foreclosure pursuant to rights herein granted on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law.

11. Mortgagee and Trustee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

12. No remedy or right of Mortgagee or of Trustee acting on Mortgagee's behalf shall be exclusive of, but shall be cumulative and in addition to, every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing or any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee or Trustee.

13. If Mortgagee or Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Premises or the title thereto or the interest of Mortgagee or Trustee under this Mortgage, or if Mortgagee or Trustee employs an attorney to collect any or all of the indebtedness hereby secured, Mortgagee or Trustee shall be reimbursed by Mortgagor, immediately and without demand, for all reasonable costs, charges, expenses and attorneys' fees incurred by it in any such case and the same shall be secured hereby as a further charge and lien upon the Premises.

14. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered

or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Mortgage shall in no way be affected thereby.

15. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of the Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

16. This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought, but only in accordance with the provisions of Article XII of the Indenture.

17. Mortgagor hereby warrants specially the title to the Premises and will execute such further assurances as may be requisite.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed and sealed, all as of the day and year first above written.

KEEBLER COMPANY

(SEAL)

BY \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
(Type or Print Name)

ACKNOWLEDGMENT

STATE OF ILLINOIS )  
                              )  
COUNTY OF DUPAGE )

Before me, \_\_\_\_\_, this \_\_\_\_ day  
of \_\_\_\_\_, 1980, personally appeared Keebler Company by  
\_\_\_\_\_ and \_\_\_\_\_ its Vice President and  
Assistant Secretary, respectively, and acknowledged the execution  
of the foregoing instrument.

Given under my hand and notarial seal, this \_\_\_\_ day of  
\_\_\_\_\_, 1980.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:  
  
\_\_\_\_\_



SCHEDULE I  
TO  
MORTGAGE AND SECURITY AGREEMENT

SCHEDULE II  
TO  
MORTGAGE AND SECURITY AGREEMENT

SCHEDULE III

PERMITTED ENCUMBRANCES

1. This Mortgage.
2. Liens for taxes and special assessments on the real estate not then delinquent.
3. Any mechanics', laborer's, materialmen's, supplier's or vendor's lien or right in respect of the real estate if payment is not yet due and payable under the contract in question.
4. Liens of taxes, assessments, levies, fees and other governmental charges and of mechanics, laborers, materialmen, suppliers or vendors, which are due and payable but the amount or validity thereof is being contested by the Mortgagor in good faith and by appropriate proceedings; provided that during the period of such contest the enforcement of any such contested item shall be effectively stayed; and further provided that nonpayment of any such item will not materially endanger the lien or security interest afforded by this Mortgage as to any material part of the real estate and that neither the real estate nor any material part thereof will be subject to loss or forfeiture as a result of nonpayment of such item during such period and, prior to the commencement of any such contest, the Mortgagor shall deposit with the Trustee a certificate of the President or an appropriate Vice President of the Mortgagor (and, if the amount to which any such contested item relates is \$25,000 or more, an opinion of Independent Counsel, as defined in the Financing Agreement) to that effect.
5. Minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the real estate and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Mortgagor.
6. Easements, rights-of-way, reservations and restrictions of record on the date of delivery of this Mortgage.

MAR 11 1980

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CITY OF FORT WAYNE, INDIANA

AND

KEEBLER COMPANY

---

FINANCING AGREEMENT

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Dated as of March 1, 1980

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The interest of City of Fort Wayne, Indiana in this Agreement and in all amounts receivable hereunder has been assigned to Fort Wayne National Bank, as Trustee under the Indenture of Trust dated as of March 1, 1980 from City of Fort Wayne, Indiana.

# FINANCING AGREEMENT

## TABLE OF CONTENTS

	<u>Page</u>
PARTIES .....	1
PREAMBLES .....	1
ARTICLE I	
DEFINITIONS	
SECTION 1.1      Definition of General Terms .....	1
ARTICLE II	
REPRESENTATIONS	
SECTION 2.1      Representations of the Issuer .....	4
SECTION 2.2      Representations of the Company .....	5
ARTICLE III	
CONSTRUCTION OF THE PROJECT; ISSUANCE OF THE BONDS	
SECTION 3.1      Agreement to Construct and Equip the Project	7
SECTION 3.2      Agreement to Issue Series 1980 Bonds; Application of Bond Proceeds; Additional Bonds .....	8
SECTION 3.3      Disbursements from the Construction Fund ....	8
SECTION 3.4      Establishment of Completion Date-Obligation of the Company to Complete .....	10
SECTION 3.5      Investment of Moneys in the Construction Fund and Bond Fund .....	13
SECTION 3.6      Special Arbitrage Certifications .....	13

## ARTICLE IV

### REPAYMENT PROVISIONS

SECTION 4.1	Bond Proceeds .....	14
SECTION 4.2	Repayment and Payment of Other Amounts Payable	14
SECTION 4.3	No Defense or Set-Off - Absolute and Unconditional Obligation .....	16
SECTION 4.4	Assignment of the Issuer's Rights .....	17

## ARTICLE V

### SPECIAL COVENANTS AND AGREEMENTS

SECTION 5.1	The Issuer's Right of Access to the Project .	17
SECTION 5.2	Release and Indemnification Covenants .....	17
SECTION 5.3	Tax Exempt Status of the Bonds .....	18
SECTION 5.4	Qualification in Indiana .....	20
SECTION 5.5	Insurance .....	20
SECTION 5.6	Maintenance and Repair .....	20
SECTION 5.7	Taxes, Governmental, Utility and Other Charges .....	20
SECTION 5.8	Recordation and Financing Statements .....	20
SECTION 5.9	The Company to Maintain its Corporate Existence; Conditions Under Which Exceptions Permitted .....	21
SECTION 5.10	Maintenance of Shareholder's Equity .....	22
SECTION 5.11	Financial Reports .....	22
SECTION 5.12	Right to Inspect .....	25

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1	Events of Default .....	25
SECTION 6.2	Remedies on Default .....	27
SECTION 6.3	Agreement to Pay Attorneys' Fees and Expenses	29
SECTION 6.4	No Remedy Exclusive .....	29
SECTION 6.5	No Additional Waiver Implied by One Waiver ..	30

## ARTICLE VII

### OPTIONAL AND MANDATORY PREPAYMENT

SECTION 7.1	Obligation to Prepay Installments .....	30
SECTION 7.2	Options to Prepay Installments .....	33
SECTION 7.3	Amount of Prepayment under Section 7.1 and 7.2	35
SECTION 7.4	Additional Option to Prepay Installments ....	35
SECTION 7.5	Notice of Prepayment .....	35
SECTION 7.6	Redemption of Bonds with Prepayment Moneys ..	36

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.1	Notices .....	36
SECTION 8.2	Assignments .....	36
SECTION 8.3	Severability .....	36
SECTION 8.4	Execution of Counterparts .....	37
SECTION 8.5	Amounts Remaining in Bond Fund .....	37
SECTION 8.6	Amendments, Changes and Modifications .....	37
SECTION 8.7	Governing Law .....	37
SECTION 8.8	Authorized Company Representatives .....	37
SECTION 8.9	Term of the Agreement .....	37
SECTION 8.10	Binding Effect .....	38

TESTIMONIUM	.....	38
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SIGNATURES AND SEALS	.....	38
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EXHIBIT A	Description of the Project .....	39
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## FINANCING AGREEMENT

THIS FINANCING AGREEMENT, made and entered into as of March 1, 1980 by and between City of Fort Wayne, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana, party of the first part (the "Issuer"), and Keebler Company, a corporation organized and existing under the laws of the State of Delaware, party of the second part (the "Company").

### W I T N E S S E T H:

In consideration of the respective representations and agreements herein contained, the parties hereto agree as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall be a limited obligation of the Issuer, payable solely out of the proceeds derived from this Financing Agreement and the sale of the bonds referred to in Section 3.2 hereof, all as herein provided):

## ARTICLE I

### DEFINITIONS

SECTION 1.1. DEFINITION OF GENERAL TERMS. Certain terms used in this Financing Agreement are hereinafter defined in this Section 1.1. When used herein, such terms shall have the meanings given to them by the language employed in this Article I defining such terms, unless the context clearly indicates otherwise:

"Act" means I.C. 18-6-4.5, as supplemented and amended.

"Additional Bonds" means the additional parity Bonds authorized to be issued by the Issuer pursuant to Section 2.10 of the Indenture.

"Agreement" means this Financing Agreement as from time to time supplemented and amended.

"Authorized Company Representative" means such person at the time and from time to time designated by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Company by the president, any vice president, treasurer



or assistant treasurer of the Company to act on behalf of the Company. Such certificate shall designate an alternate or alternates.

"Bond" or "Bonds" means the Series 1980 Bonds and any Additional Bonds issued pursuant to the Indenture.

"Bond Fund" means the Bond Fund created and established in Section 5.2 of the Indenture.

"Code" means the Internal Revenue Code of 1954, as amended.

"Company" means (i) Keebler Company, the party of the second part hereto and its successors and assigns and (ii) any surviving, resulting or transferee corporation as provided in Section 5.9 hereof.

"Completion Date" means the date of completion of the Project as that date shall be certified as provided in Section 3.4 hereof.

"Construction Fund" means the Construction Fund created and established in Section 5.6 of the Indenture.

"Construction Period" means the period between the beginning of construction or the date on which Bonds are first delivered to the purchasers thereof, whichever is earlier, and the Completion Date.

"Cost of the Project" means the sum of the items authorized to be paid from the Construction Fund pursuant to the provisions of Section 3.3 hereof.

"Indenture" means the Indenture of Trust, including any indentures supplemental thereto as therein permitted, between the Issuer and the Trustee, of even date herewith, pursuant to which the Bonds are authorized to be issued and pursuant to which the Issuer's interest in this Agreement is pledged as security for the payment of principal, premium, if any, and interest on the Bonds.

"Independent Counsel" means an attorney duly admitted to practice law before the highest court of any state and not an officer or a full time employee of the Issuer or the Company, but who may be counsel to the Issuer or the Company.

"Independent Engineer" means an engineer or engineering firm qualified to practice the profession of engineering under the laws of the State of Indiana and who or which is not a full time employee of either the Issuer or the Company.

"Issuer" means City of Fort Wayne, Indiana, the party of the first part hereto, and any successor body to the duties or functions of the Issuer.

"Mortgage" means the Mortgage and Security Agreement of even date herewith from the Company to the Issuer, whereunder a mortgage of and security interest in, the real estate and improvements thereon and equipment forming a part of the Project have been granted to the Issuer, as from time to time amended or supplemented.

"Note" means the Promissory Note of the Company, dated the date hereof, evidencing its obligations to pay all amounts payable under Section 4.2(a) hereof. For all purposes of this Agreement and the Indenture, the obligations of the Company under the Note shall be deemed to be amounts payable hereunder.

"Project" means those facilities (whether land, buildings or equipment) described in Exhibit A hereto, as they may at any time exist, to be financed, in whole or in part with proceeds from the sale of the Bonds or the proceeds of any payment by the Company pursuant to Section 3.4 of this Agreement.

"Repayment installment" means an amount that the Company is required to pay directly to the Trustee pursuant to Section 4.4 hereof (including amounts required to be paid pursuant to the Note) as a repayment of the loan made by the Issuer under this Agreement, which amount is determined in accordance with Section 4.2(a) hereof.

"Series 1980 Bonds" means the \$825,000 aggregate principal amount of Industrial Development Revenue Bonds (Keebler Company Project), Series 1980 authorized to be issued by the Issuer pursuant to the terms and conditions of Sections 2.1 and 2.2 of the Indenture.

"Shareholder's Equity" means the total assets of a corporation (after first deducting therefrom all intangible assets such as good will, trademarks, etc.) minus all liabilities (including deferred income taxes) of a corporation, as such items appear on the consolidated balance sheet of a corporation.

"Trustee" means the Trustee and/or co-trustee at the time serving as such under the Indenture.

The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

Unless otherwise specified, references to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement as originally executed.

The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

## ARTICLE II

### REPRESENTATIONS

SECTION 2.1. REPRESENTATIONS OF THE ISSUER. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Issuer is a duly subsisting municipal corporation organized and existing under the laws of the State of Indiana. The Issuer has the power, under the provisions of the Act, to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Project constitutes and will constitute "economic development facilities" within the meaning of the Act. By proper action of the Common Council of the Issuer, the Issuer has duly authorized the execution and delivery of this Agreement.

(b) To finance the cost of the Project the Issuer proposes to issue its Series 1980 Bonds which will mature and bear interest as set forth in Article II of the Indenture and which will be subject to redemption as set forth in Article III of the Indenture.

(c) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Issuer's interest in this Agreement, the Note and the Mortgage will be pledged to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(d) The Issuer has not and will not pledge its interest in this Agreement, the Note or the Mortgage other than to secure the Bonds.

(e) The Issuer is not in default under any of the provisions of the laws of the State of Indiana which would affect its existence or its powers referred to in the preceding subsection (a).

(f) Under existing statutes and decisions no taxes on income or profits are imposed on the Issuer.

(g) Issuer hereby finds and determines that financing the Project will further the public purposes of the Act.

(h) Issuer hereby finds and determines that all requirements of the Act have been complied with.

(i) No officer or official of the Issuer has any interest (financial, employment or other) in the Company or the transactions contemplated by this Agreement.

SECTION 2.2. REPRESENTATIONS OF THE COMPANY. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly incorporated under the laws of the State of Delaware and is in good standing in that State, is duly qualified to do business as a foreign corporation and is in good standing in the State of Indiana, has power to enter into and by proper corporate action has been duly authorized to execute and deliver this Agreement, the Mortgage and the Note.

(b) Neither the execution and delivery of this Agreement, the Mortgage or the Note, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Mortgage, conflicts with or results in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is now a party or by which it is bound.

(c) The estimated Cost of the Project has been determined in accordance with sound engineering and accounting principles.

(d) The Project consists and will consist of those facilities described in Exhibit A hereto and no changes shall be made in the Project or in the operation thereof which will affect the qualification of the Project as "economic development facilities" under the Act or impair the exemption of interest on any of the Bonds from Federal income taxation.

(e) The Company is the lawful owner and is now lawfully seized and possessed of the real property portion of the Project as shown on Exhibit A hereto and, upon acquisition, will be the lawful owner of the personal property portion of the Project, as shown on said Exhibit A, free and clear of all liens, charges and encumbrances whatever, except Permitted Encumbrances (as defined in the Mortgage); the Company has full power and authority to mortgage and grant a security interest in the same to the Issuer; and the Company has good and marketable title thereto and will preserve, warrant and defend the same unto the Issuer and the Trustee against the claims of all persons and parties.

(f) The acquisition, construction and installation of the Project will create additional employment in the City of Fort Wayne, Indiana.

(g) The Company intends to and will use or cause the Project to be used to the expiration or earlier termination of this Agreement as provided herein as "economic development facilities" within the meaning of the Act.

(h) The Project consists, and will at all times consist, of land or property which is subject to the allowance for depreciation provided in Section 167 of the Code; all expenditures for and costs of the Project paid from Series 1980 Bond proceeds (including financing costs and any interest on the Series 1980 Bonds paid from Series 1980 Bond proceeds) are chargeable to the Project's capital account for Federal income tax purposes or would be so chargeable either with a proper election by the Company under the Code or but for a proper election by the Company to deduct such amounts.

(i) At least 90% of the proceeds of the Bonds will be used to provide the Project.

(j) The Project will be located wholly in the City of Fort Wayne, Indiana.

(k) Acquisition and construction of the Project commenced after \_\_\_\_\_, 1979, the date on which the Issuer took some official action toward the issuance of the Series 1980 Bonds.

### ARTICLE III

#### CONSTRUCTION OF THE PROJECT; ISSUANCE OF THE BONDS

SECTION 3.1. AGREEMENT TO CONSTRUCT AND EQUIP THE PROJECT. The Company agrees that it will acquire, install or construct, or complete the acquisition, installation or construction of, the Project, and construct, acquire and install other facilities and real and personal property deemed necessary for the operation of the Project, substantially in accordance with the plans and specifications therefor prepared by the Company including any and all supplements, amendments and additions (or deletions) thereto (or therefrom).

In the event that Exhibit A hereto is to be amended or supplemented in accordance with the provisions of Section 12.1 of the Indenture, the Issuer will enter into, and will instruct the Trustee to consent to, an amendment of or supplement to Exhibit A hereto upon receipt of:

(i) a certificate of the Authorized Company Representative describing in detail the proposed changes and stating that they will not have the effect of disqualifying the Project as "economic development facilities" within the meaning of the Act; and

(ii) a copy of the proposed form of amendment or supplement to Exhibit A hereto, and a copy of the required amendment or supplement to the Mortgage.

The Company has or will acquire fee simple or absolute ownership to the Project and will mortgage and create a security interest in the Project under the Mortgage to secure the

obligations of the Company hereunder and under the Note, which will be assigned to the Trustee by the Indenture.

**SECTION 3.2. AGREEMENT TO ISSUE SERIES 1980 BONDS;  
APPLICATION OF BOND PROCEEDS; ADDITIONAL BONDS.**

(a) In order to provide funds to finance the Cost of the Project as provided in Section 4.1 hereof, the Issuer agrees that it will issue under the Indenture, sell and cause to be delivered to the purchasers thereof, the Series 1980 Bonds, bearing interest and maturing as set forth in the Indenture. The Issuer will thereupon deposit the proceeds received from the sale of the Series 1980 Bonds as follows: (1) in the Bond Fund, a sum equal to the accrued interest paid by the purchasers of such Series 1980 Bonds and (2) the balance of the proceeds from the sale of such Series 1980 Bonds in the Construction Fund.

(b) So long as the Company shall not be in default hereunder and whenever the Company requests, the Issuer may authorize and will use its best efforts to issue Additional Bonds in aggregate principal amounts specified from time to time by the Company in order to provide funds for the purpose of (1) financing the cost of completing the Project, (2) financing the cost of additional economic development facilities at the Project or (3) refunding any Bonds.

**SECTION 3.3. DISBURSEMENTS FROM THE CONSTRUCTION FUND.** The Issuer will authorize and direct the Trustee upon compliance with Section 5.7 of the Indenture to disburse the moneys in the Construction Fund to or on behalf of the Company for the following purposes (but, subject to the provisions of Section 3.5 hereof, for no other purpose):

(a) Payment to the Company of such amounts, if any, as shall be necessary to reimburse the Company in full for all advances and payments made by it at any time prior to or after the delivery of the Bonds for expenditures in connection with the preparation of plans and specifications for the Project (including any preliminary study or planning of the Project or any aspect thereof) and the construction and acquisition of the Project.

(b) Payment of the initial or acceptance fee of the Trustee, Trustee and paying agent fees incurred during the Construction Period, legal, financial and accounting fees and expenses, and printing and engraving costs incurred in connection with the authorization, sale and issuance of the Bonds, the execution and filing of any instruments and the preparation of all other documents in connection therewith, and payment of all fees, costs and expenses for the preparation of this Agreement, the Indenture, the Mortgage and the Bonds.

(c) Payment for labor, services, materials and supplies used or furnished in site improvement and in the construction and acquisition of the Project, all as provided in the plans, specifications and work orders therefor, payment for the cost of the construction, acquisition and installation of utility services or other facilities, and all real and personal property deemed necessary in connection with the Project and payment for the miscellaneous expenditures incidental to any of the foregoing items.

(d) Payment of the fees, if any, for architectural, engineering, legal, underwriting and supervisory services with respect to the Project.

(e) To the extent not paid by a contractor for construction or installation with respect to any part of the Project, payment of the premiums on all insurance required to be taken out and maintained during the Construction Period.

(f) Payment of the taxes, assessments and other charges, if any, that may become payable during the Construction Period with respect to the Project, or reimbursement thereof if paid by the Company.

(g) Payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the Project.

(h) Interest on the Bonds for the Construction Period.

(i) Payment of any other costs permitted by the Act other than interest on the Bonds after the Completion Date.



(j) All moneys remaining in the Construction Fund after the Completion Date and after payment or provision for payment of all other items provided for in the preceding subsections (a) to (i), inclusive, of this Section, shall at the direction of the Company be used in accordance with Section 3.4 hereof.

Each of the payments referred to in this Section shall be made upon receipt by the Trustee of a written order complying with the form and containing the information set forth in Section 5.7 of the Indenture signed by the Authorized Company Representative certifying: (i) that none of the items for which the payment is proposed to be made has formed the basis for any payment theretofore made from the Construction Fund; and (ii) that each item for which the payment is proposed to be made is or was necessary in connection with the Project.

SECTION 3.4. ESTABLISHMENT OF COMPLETION DATE-OBLIGATION OF COMPANY TO COMPLETE. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating the Cost of the Project and stating that (i) construction of the Project has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials and supplies used in such construction have been paid for, and (ii) all other facilities necessary in connection with the Project have been constructed, acquired and installed in accordance with the plans and specifications and work orders therefor and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. It shall be the duty of the Company to cause such certificate to be furnished to Trustee as soon as the Project shall have been completed.

Moneys remaining in the Construction Fund (including any earnings on investments which remain in the Construction Fund) at the time such certificate is delivered to Trustee may be used, at the direction of the Authorized Company Representative, which shall be given within 120 days after the Completion Date, for any of the following purposes:

(1) for the payment of any Cost of the Project not then due and payable as specified in the above-mentioned certificate;

(2) for transfer to the Bond Fund; provided, that 90% or more of the amount of the proceeds (excluding accrued interest and amounts used to pay expenses of issuing the Bonds) received by the Issuer from the sale of the Bonds has been used to acquire, construct, install or equip the Project; or

(3) if less than 90% of the amount of the proceeds (excluding accrued interest and amounts used to pay expenses of issuing the Bonds) received by the Issuer from the sale of the Bonds was used to acquire, construct, install or equip the Project, for transfer to the Bond Fund, but only if, and to the extent that, the Trustee has been furnished with an opinion of nationally recognized municipal bond counsel mutually acceptable to the Company, the Issuer and the Trustee, to the effect that such transfer is lawful under the Act and does not adversely affect the exclusion from federal gross income of interest on any of the Bonds.

Any moneys (including investment proceeds) remaining in the Construction Fund on the date of the aforesaid certificate and not set aside for the payment of Costs of the Project as specified in (1) above or transferred to the Bond Fund pursuant to (2) or (3) above shall on such date be deposited by the Trustee in a separate escrow account and used to pay all or part of the redemption price of Bonds at the earliest possible redemption date or dates; provided that, until so used such moneys may also be used, at the direction of the Authorized Company Representative, for one or more of the following purposes:

(a) to pay all or part of the price of purchasing Bonds on tender, in the open market or at private sale, on or before such redemption date or dates, for the purpose of cancellation;

(b) to pay all or part of the principal of and interest on the Bonds coming due on or before such redemption date or dates;

(c) for the payment of qualifying costs of any additional improvements at the Project permitted under the Act, provided that prior to such use Issuer adopts such proceedings as may be necessary to amend this Agreement and the Mortgage to include such additional improvements within the definition of Project as used herein; or

(d) for any other purpose;

provided that, no moneys on deposit in such escrow account may be used for any of the purposes specified in this paragraph (including the redemption of Bonds) unless and until the Trustee has been furnished with an opinion of nationally recognized municipal bond counsel mutually acceptable to the Company, the Issuer and the Trustee, to the effect that such use is lawful under the Act and does not adversely affect the exclusion from federal income taxes of interest on any of the Bonds; and provided further that, until used for one or more of the foregoing purposes, moneys on deposit in such escrow account may be invested in investments authorized by Section 3.5 of this Agreement, but may not be invested to produce a yield on such moneys (computed from the Completion Date and taking into account any investment of such moneys during the period from the Completion Date until such moneys were deposited in such escrow account) greater than the yield on the Bonds from which such proceeds were derived, all as such terms are used in and determined in accordance with Section 103(c) of the Code and regulations promulgated thereunder.

In the event the moneys in the Construction Fund available for payment of the costs of the Project should not be sufficient to pay the costs thereof in full, the Company agrees to pay directly, or to deposit in the Construction Fund moneys sufficient to pay, the costs of completing the Project as may be in excess of the moneys available therefor in the Construction Fund. The Issuer does not make any warranty, either express or implied, that the moneys which will be paid into the Construction Fund and which, under the provisions of this Agreement, will be available for payment of the costs of the Project, will be sufficient to pay all the costs which will be incurred in that connection. The Company agrees that if after exhaustion of the moneys in the Construction Fund the

Company should pay, or deposit moneys in the Construction Fund for the payment of any portion of the said costs of the Project pursuant to the provisions of this Section it shall not be entitled to any reimbursement therefor from the Issuer or from the Trustee or from the holders of any of the Bonds, nor shall it be entitled to any diminution of the amounts payable under Section 4.2 hereof.

SECTION 3.5. INVESTMENT OF MONEYS IN THE CONSTRUCTION FUND AND BOND FUND. Any moneys held as a part of the Construction Fund or Bond Fund shall at the written request of the Authorized Company Representative be invested or reinvested by the Trustee to the extent permitted by law in the following: (i) any bonds or other obligations which as to principal and interest constitute direct obligations of or are unconditionally guaranteed by the United States of America, (ii) obligations of the Federal National Mortgage Association, (iii) obligations of the Federal Intermediate Credit Corporation, (iv) obligations of Federal Banks for Cooperatives, (v) obligations of Federal Land Banks, (vi) obligations of Federal Home Loan Banks, (vii) time certificates of deposit of banks organized under the laws of the United States or any State thereof which have a combined capital, surplus and undivided profits of at least \$25,000,000, or (viii) commercial paper rated Prime-1 by Moody's Investor's Service other than the Company's commercial paper. The Trustee may make any and all such investments through its own bond department.

The investments so purchased shall be held by the Trustee and shall be deemed at all times a part of the Construction Fund or Bond Fund, as the case may be, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund and any losses resulting from such investment shall be charged to such fund and paid by the Company. For the purposes of this Section, any interest bearing deposits, including certificates of deposit, issued by or on deposit with the Trustee shall be deemed to be investments and not deposits.

SECTION 3.6. SPECIAL ARBITRAGE CERTIFICATIONS. The Issuer and the Company jointly and severally covenant with all purchasers and holders of the Bonds from time to time outstanding that so long as any of the Bonds remain outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be "arbitrage

bonds" within the meaning of Section 103(c) of the Code, and any lawful regulations promulgated or proposed thereunder, including Sections 1.103-13 and 1.103-14 of the Income Tax Regulations (26 CFR Part 1), as the same exist on this date, or may from time to time hereafter be amended, supplemented or revised.

#### ARTICLE IV

##### REPAYMENT PROVISIONS

SECTION 4.1. BOND PROCEEDS. The Issuer covenants and agrees, upon the terms and conditions in this Agreement, to finance the cost of the Project for the Company. Pursuant to said covenant and agreement, the Issuer will issue the Bonds upon the terms and conditions contained in this Agreement and the Indenture and will cause the Bond proceeds to be applied as provided in Article III hereof. Except as provided in Section 3.2 hereof, such proceeds shall be disbursed to or on behalf of the Company as provided in Section 3.3 hereof.

##### SECTION 4.2. REPAYMENT AND PAYMENT OF OTHER AMOUNTS PAYABLE.

(a) On or before September 1, 1980 and on or before 10:00 o'clock A.M., Trustee's local time, on each March 1 and September 1 thereafter until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Company covenants and agrees to pay to the Trustee in Federal or other immediately available funds for deposit in the Bond Fund, as a repayment installment of the loan made to the Company out of Bond proceeds pursuant to Section 4.1 hereof, a sum equal to the amount payable on such date as principal (whether at maturity, or upon redemption or acceleration), premium, if any, and interest upon the Series 1980 Bonds as provided in the Indenture. The Company agrees to execute the Note to evidence such obligation. Each payment made into the Bond Fund under the Note shall be deemed to be a credit against the corresponding obligation of the Company under this Section 4.2(a).

Each payment pursuant to this Section shall at all times be sufficient to pay the total amount of interest and principal (whether at maturity or upon redemption or acceleration) and premium, if any, payable on the Bonds on the March 1 or September 1 that such payment is due; provided that

the Excess Amount (as hereinafter defined) held by the Trustee in the Bond Fund on a payment date shall be credited against the payment due on such date; and provided further that, subject to the provisions of the next succeeding sentence, if at any time the amount held by the Trustee in the Bond Fund should be sufficient (and remain sufficient) to pay at the times required the principal of, interest and premium, if any, on the Bonds then remaining unpaid, the Company shall not be obligated to make any further payments under the provisions of this Section. Notwithstanding the provisions of the preceding sentence, if on any date the Excess Amount held by the Trustee in the Bond Fund is insufficient to make the then required payments of principal (whether at maturity or upon redemption or acceleration) interest and premium, if any, on the Bonds on such date, the Company shall forthwith pay such deficiency as a repayment installment hereunder. The term "Excess Amount" as of any repayment installment date shall mean the amount in the Bond Fund on such date in excess of the amount required for payment of the principal of the Bonds which have matured at maturity or on a redemption date, premium, if any, on such Bonds and past due interest in all cases where Bonds or coupons have not been presented for payment.

(b) The Company agrees to pay to the Trustee until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of the Indenture, (i) an amount equal to the annual fee of the Trustee for the ordinary services of the Trustee, as trustee, rendered and its ordinary expenses incurred under the Indenture, as and when the same become due, (ii) the reasonable fees, charges and expenses of the Trustee, as Bond Registrar and paying agent, and any other paying agent on the Bonds for acting as paying agent as provided in the Indenture, as and when the same become due, (iii) the reasonable fees, charges and expenses of the Trustee for the necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, as and when the same become due, and (iv) the cost of printing any Bonds required to be furnished by the Issuer at the expense of the Issuer. The Company further agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts under the Indenture, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers and duties under the Indenture.

(c) The Company also agrees to pay upon written request, reasonable expenses of the Issuer related to the Project which are not otherwise required to be paid by the Company under the terms of this Agreement; provided that the Company shall have approved through an Authorized Company Representative such expenses in writing prior to the incurrence thereof.

In the event the Company should fail to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, and the Company agrees to pay the same with interest thereon to the extent permitted by law at the rate of ten per cent (10%) per annum until paid.

SECTION 4.3. NO DEFENSE OR SET-OFF - ABSOLUTE AND UNCONDITIONAL OBLIGATION. The obligations of the Company to make the payments required in Section 4.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Issuer, and the Company shall pay absolutely net during the term of this Agreement the payments to be made on account of the loan as prescribed in Section 4.2 and all other payments required hereunder free of any deductions and without abatement, diminution or set-off; and until such time as the principal of, premium, if any, and interest on the Bonds shall have been fully paid, or provision for the payment thereof shall have been made in accordance with the Indenture, the Company: (i) will not suspend or discontinue any payments provided for in Section 4.2 hereof; (ii) will perform and observe all of its other agreements contained in this Agreement; and (iii) except as provided in Article VII hereof, will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure to complete the Project, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax laws of the United States of America or of the State of Indiana or any political subdivision of either of these, or any failure of the Issuer or Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the Indenture, except to the extent permitted by this Agreement.

SECTION 4.4. ASSIGNMENT OF ISSUER'S RIGHTS. As security for the payment of the Bonds, the Issuer will assign to the Trustee the Issuer's rights under this Agreement (including the Note), including the right to receive payments hereunder (except the right to receive payments, if any, under Sections 4.2(c) and 5.2 hereof), and hereby directs the Company to make said payments directly to the Trustee. The Company hereby assents to such assignment and will make payments directly to the Trustee without defense or set-off by reason of any dispute between the Company and the Issuer or the Trustee. As additional security for the payment of the Bonds, the Issuer, as mortgagee under the Mortgage, will assign to the Trustee the Issuer's rights under the Mortgage. The Company herewith assents to such assignment and the Issuer and the Company agree that the Trustee shall be entitled to the same rights, protection and indemnification in acting under the Mortgage as afforded the Trustee under the Indenture.

#### ARTICLE V

#### SPECIAL COVENANTS AND AGREEMENTS

SECTION 5.1. THE ISSUER'S RIGHT OF ACCESS TO THE PROJECT. The Company agrees that the Issuer, the Trustee and their or either of their duly authorized agents, upon receipt of written request, shall have the right at all reasonable times during normal business hours to examine and inspect the Project for the purposes of determining compliance with the Agreement and the Mortgage, including the covenants contained in this Article V. The rights of access hereby reserved to the Issuer, the Trustee or their agent may be exercised only after execution by the person seeking access to the Project of release of liability and secrecy agreements in the form then currently used by the Company. However, nothing contained in this Section or in any other provision of this Agreement shall be construed to entitle the Issuer or the Trustee to any information or inspection involving the confidential know-how of the Company.

SECTION 5.2. RELEASE AND INDEMNIFICATION COVENANTS. The Company releases the Issuer from and covenants and agrees that the Issuer shall not be liable for, and to indemnify and hold the Issuer harmless against, any loss or damage to property or any injury to or death of any person occurring on or about or resulting from any defect in the Project provided that the indemnity provided in this sentence shall be effective only to the extent of any loss that may be sustained by the Issuer in excess of the net proceeds received from any insurance carried



with respect to the loss sustained.

SECTION 5.3. TAX EXEMPT STATUS OF THE BONDS. The Company covenants that (i) neither the Company nor any person related to the Company within the meaning of Section 103(b)(6)(C) of the Code (a "Related Person") owns or operates a facility or a plant in the City of Fort Wayne, Indiana (other than the Project); (ii) the proceeds of the Series 1980 Bonds are to be used with respect to facilities to be located in the corporate limits of the Issuer; (iii) that the Company will be the principal user of the facilities to be acquired and constructed with the proceeds of the Series 1980 Bonds within the meaning of Section 103(b)(6) of the Code; and (iv) that there are no outstanding obligations of any state, territory or possession of the United States, or any political subdivision of the foregoing or of the District of Columbia constituting "exempt small issues" within the meaning of Section 1.103-10 of the Internal Revenue Service Rules and Regulations, Federal Register Vol. 37, No. 150 (the "Regulations"), the proceeds of which have been or are to be used primarily with respect to facilities located in the corporate limits of the Issuer and which are to be used primarily by the Company or any Related Person other than the Series 1980 Bonds.

The Company further covenants that it does not presently intend to make any capital expenditures which will cause the interest on the Series 1980 Bonds to become subject to federal income taxes pursuant to the provisions of Section 103(b) of the Code so long as any of the Bonds are outstanding under the Indenture. The Company further covenants that it will not take any action (other than making the aforesaid capital expenditures) nor permit any action to be taken which would cause the interest on the Bonds to become subject to federal income taxes, provided, that the Company shall not have violated this covenant if the interest on any of the Series 1980 Bonds becomes taxable to a person who is a substantial user of the Project or a related person pursuant to the provisions of Section 103(b)(8) of the Code.

The Company further covenants that it shall furnish to the Issuer and the Trustee (i) at the time of issuance of any Additional Bonds which require the Issuer to elect to apply the provisions of Section 103(b)(6)(D) of the Code, a statement of the aggregate amount of capital expenditures made or incurred in the corporate limits of the Issuer with respect to property used by the Company or any Related Person and which could, under any rule of the Code, be capitalized for federal income tax

purposes ("Included Capital Expenditures") during the period beginning three years before the date of such delivery of the Series 1980 Bonds, (ii) within 90 days following the close of each fiscal year of the Company occurring within two years after the issuance of such Additional Bonds, a statement of the aggregate amount of Included Capital Expenditures made or incurred during the period beginning with the date of the last statement filed with the Trustee and ending on the last day of the preceding fiscal year, (iii) within 90 days following the third anniversary date of the issuance of any such Additional Bonds, a statement of the aggregate amount of Included Capital Expenditures made or incurred during the period beginning with the date of the last statement filed with the Trustee and ending on such anniversary date and (iv) within 30 days after it has made or incurred the maximum amount of capital expenditures permitted under Section 103(b)(6)(D) a statement to that effect. Each such statement shall set forth (A) a description of those capital expenditures which are capital expenditures under Section 103(b)(6)(D)(ii) and shall take into account facilities referred to in Section 103(b)(6)(E) in computing such capital expenditures and (B) a description, and the reason for the exclusion, of any capital expenditures which the Company has not taken into account under Section 103(b)(6)(F) of the Code. In addition, the Company will attach to its consolidated federal income tax return a copy of the Issuer's election to have the provisions of Section 103(b)(6)(D) of the Code apply to any such Additional Bonds and for each taxable year of the Company which includes any portion of the three year period following issuance and delivery of such Additional Bonds, the Company shall file a supplemental statement listing the information set forth in (ii) and (iii) above with the Internal Revenue Service District Director or Director of the Regional Service Center with whom the Company's consolidated federal income tax return is required to be filed on the due date described for filing such return (without regard to any extensions of time). This covenant shall survive the termination of this Agreement.

The Company further covenants that it will file with the Trustee any statement, supplemental statements or other tax schedule, return or document (whether pursuant to Treasury Regulations Section 1.103-10(b)(2)(vi)(c), as the same may be amended or supplemented, or otherwise) which disclose that an Event of Taxability (as defined in Section 7.1 hereof) shall have in fact occurred.

SECTION 5.4. QUALIFICATION IN INDIANA. The Company agrees that throughout the term of this Agreement it will be qualified to do business in the State of Indiana.

SECTION 5.5. INSURANCE. The Company agrees to maintain all necessary insurance with respect to the Project in accordance with the provisions of the Mortgage.

SECTION 5.6. MAINTENANCE AND REPAIR. The Company agrees that it will at its own expense (i) keep the Project in as reasonably safe condition as its operations shall permit and (ii) keep the Project in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof in accordance with the provisions of the Mortgage.

SECTION 5.7. TAXES, GOVERNMENTAL, UTILITY AND OTHER CHARGES. The Company agrees to pay all taxes and assessments, general or special, concerning or related in any way to the Project, or any part thereof, and any other charges, governmental or otherwise, in accordance with the provisions of the Mortgage.

SECTION 5.8. RECORDATION AND FINANCING STATEMENTS. The Company shall, forthwith after the execution and delivery of the Mortgage and the Indenture, cause executed copies thereof to be recorded in such manner and at such places as may be required by law fully to protect the rights of the Issuer and the Trustee thereunder. The Company shall also cause a financing statement with respect to the Mortgage naming the Company as debtor and a financing statement with respect to the Indenture naming the Issuer as debtor to be filed in such manner and at such places as may be required by law fully to protect the rights of the Issuer and the Trustee thereunder. The Company and the Issuer shall execute or cause to be executed any and all further instrument as may be required by law or as shall reasonably be requested by the Trustee for such protection of the rights of the holders of the Bonds and shall furnish satisfactory evidence to the Trustee of filing and refiling of such instruments and of every additional instrument which shall be necessary to preserve the rights of the Trustee and the Issuer hereunder and under the Mortgage and the Indenture during the term of this Agreement. Except to the extent it is exempt therefrom, the Company will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of this assurance,

and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, the Indenture and the Mortgage and such instruments of further assurance.

SECTION 5.9. THE COMPANY TO MAINTAIN ITS CORPORATE EXISTENCE; CONDITIONS UNDER WHICH EXCEPTIONS PERMITTED. The Company agrees that during the term of this Agreement it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation; or permit one or more corporations to consolidate with or merge into it; provided, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another corporation if the surviving, resulting or transferee corporation, as the case may be:

(a) shall be a corporation organized under the laws of the United States of America or any state, district or territory thereof;

(b) shall assume and agree in writing in an agreement delivered to the Trustee in form satisfactory to the Trustee or by operation of law to pay and to perform all of the obligations of the Company under this Agreement;

(c) shall have, upon the consummation of any such merger, consolidation, sale or transfer, as the case may be, a consolidated Shareholder's Equity equal to at least \$50,000,000; and

(d) shall deliver to the Trustee a certificate executed by its chief financial officer stating that none of the covenants and provisions of this Agreement will be violated or abrogated as a result of any such merger, consolidation, sale or transfer, as the case may be.

If the Company shall be the surviving, resulting or transferee corporation, as the case may be, then compliance with subparagraphs (b) and (d) hereinabove shall not be required.

SECTION 5.10. MAINTENANCE OF SHAREHOLDER'S EQUITY.

So long as any of the Bonds shall remain outstanding, the Company covenants that it will maintain its Shareholder's Equity at an amount not less than \$50,000,000.

SECTION 5.11. FINANCIAL REPORTS. The Company agrees to have an annual audit performed by an independent certified public accountant or firm of independent certified public accountants and to furnish the Trustee and each registered holder of not less than 50% in aggregate principal amount of the Series 1980 Bonds:

(a) Quarterly Statements-as soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Company, and in any event within 45 days thereafter, duplicate copies of:

(1) a consolidated balance sheet of the Company and its consolidated subsidiaries and of the Company and its Restricted Subsidiaries as at the end of such quarter, and

(2) consolidated statements of income and of surplus of the Company and its consolidated subsidiaries, and of the Company and its Restricted Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by a principal financial officer of the Company;

(b) Annual Statements-as soon as practicable after the end of each fiscal year of the Company, and in any event within 90 days thereafter, duplicate copies of:

(1) a consolidating and consolidated balance sheet of the Company and its consolidated subsidiaries, and of the Company and its Restricted Subsidiaries, at the end of such year, and

(2) consolidating and consolidated statements of income and of surplus of the Company and its consolidated subsidiaries, and of the Company and its Restricted Subsidiaries, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of independent certified public accountants of recognized national standing selected by the Company, which opinion shall state that such financial statements fairly present the financial condition of the companies being reported upon, have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(c) Audit Reports-promptly upon receipt thereof, one copy of each other report submitted to the Company or any Subsidiary by independent accountants in connection with special audit made by them of the books of the Company or any subsidiary;

(d) SEC and Other Reports-if and when required to be filed, promptly upon their becoming available, one copy of each financial statement, report, notice or proxy statement sent by the Company or any Subsidiary to stockholders generally, and of each regular or periodic report and any registration statement, prospectus or written communication (other than transmittal letters) in respect thereof filed by the Company or any Subsidiary with, or received by such person in connection therewith from, any securities exchange or the Securities and Exchange Commission or any successor agency;

(e) Notice of Default or Event of Default-immediately upon becoming aware of the existence of any condition or event which constitutes an event of default as defined in Section 6.1 hereof, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto; and

(f) Requested Information-with reasonable promptness, such other data and information as from time to time may be reasonably requested.

The Company agrees to furnish the Trustee, The Robinson-Humphrey Company, Inc., Atlanta, Georgia and, upon written request, any holder of the Bonds copies of the Annual Report to Shareholders of United Biscuits (Holdings), Limited, a United Kingdom Company, so long as United Biscuits (Holdings), Limited shall own or otherwise control not less than 50.1% of the Company's common stock.

As used in this Section 5.11, the following terms shall have the following meanings:

Restricted Subsidiary - a Subsidiary,

(1) organized under the laws of the United States, Puerto Rico or Canada or a jurisdiction thereof,

(2) which conducts substantially all of its business and has substantially all of its Property within the United States, Puerto Rico and Canada, and

(3) at least 80% (by number of votes) of the Voting Stock of which and 100% of all other stock and equity Securities of which are legally and beneficially owned by the Company and its Wholly-Owned Restricted Subsidiaries.

Security - shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

Subsidiary - a corporation of which the Company owns, directly or indirectly, more than 50% of the Voting Stock.

Voting Stock - Securities of any class or classes of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or persons performing similar functions).

Wholly-Owned Restricted Subsidiary - any Restricted Subsidiary, all of the equity Securities (except directors' qualifying shares) of which are owned by the Company and/or the Company's other Wholly-Owned Restricted Subsidiaries.

SECTION 5.12. RIGHT TO INSPECT. The Company will permit any representative of a holder of not less than 50% in aggregate principal amount of the Series 1980 Bonds, at such holder's expense, to visit and inspect any of the properties of the Company or any Subsidiary, to examine all their books of account, records, reports and other papers, which properties, books of account, records, reports or other papers are relevant to determination of compliance with, or to the enforcement of any representation, warranty, covenant or agreement herein, and to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss the finances and affairs of the Company and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested; provided, however, that no such person shall be entitled to make copies or extracts of or reveal to any other person (excluding such holder) any trade secrets, confidential or other information which has not otherwise been made public and which, if disclosed, might put the Company at a competitive disadvantage, except as may be required by law, by the National Association of Insurance Commissioners or by any regulatory body to whose jurisdiction such holder may be subject.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1. EVENTS OF DEFAULT. The occurrence and continuation of any one of the following shall constitute an Event of Default:

(a) (i) failure by the Company to pay any amounts required to be paid as principal or premium on the Note under Section 4.2(a) hereof and continuation of said failure through the close of business on each March 1 or September 1, as the case may be or (ii) failure by the Company to pay any amounts required to be paid as interest on the Note under Section 4.2(a) hereof and continuation of said failure for five (5) days after written notice by the Trustee; or



(b) failure by the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Agreement, other than as referred to in (a) above, for a period of 90 days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted within the applicable period and diligently pursued until the default is corrected; or

(c) the dissolution or liquidation of the Company or the filing by the Company of a voluntary petition in bankruptcy, or failure by the Company promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its obligations hereunder, or the commission by the Company of any act of bankruptcy, or adjudication of the Company as a bankrupt, or if a petition or answer proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety days after the filing thereof, or if the Company shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of the Company shall be appointed in any proceeding brought against the Company and shall not be discharged within ninety days after such appointment or if the Company shall consent to or acquiesce in such appointment, or assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors. The term "dissolution or liquidation of the Company", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Company resulting either from a merger or consolidation of the Company into or with another corporation or a dissolution or

liquidation of the Company following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in Section 5.9 hereof; or

(d) any warranty, representation or other statement contained in this Agreement or in the Mortgage or in any instrument furnished in compliance with or in reference to this Agreement or the Mortgage is false or misleading in any material respect; or

(e) the occurrence of an "event of default" under the Mortgage; or

(f) an Event of Default shall occur, as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Company in excess of \$3,000,000 in the aggregate, whether such indebtedness now exists or shall hereafter be created, and the effect of such Event of Default is to cause, or permit any holders of such indebtedness to cause, such indebtedness, or any portion thereof, to become due and payable prior to the date on which it would otherwise be or become due and payable; provided, however, that no such event shall be an Event of Default hereunder so long as the Company is contesting such event in good faith by appropriate proceedings.

SECTION 6.2. REMEDIES ON DEFAULT. Whenever any Event of Default shall have happened and is subsisting, the Trustee may take any one or more of the following remedial steps:

(a) The Trustee, by notice in writing to the Company, may declare the unpaid loan repayment installments payable under Section 4.2(a) of this Agreement (including the Note) to be due and payable immediately, if concurrently with or prior to such notice the unpaid principal amount of the Bonds has been declared to be due and payable as liquidated damages, and upon any such declaration the same shall become and shall be immediately due and payable in the amount set forth in Section 9.2 of the Indenture.

(b) The Trustee may have access to and inspect, examine and make copies of the books and records and any and all accounts of the Company relating to the Project.

(c) The Issuer or the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement.

In case the Trustee shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Company and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee shall continue as though no such proceeding had been taken.

The Company covenants that, in case an Event of Default shall occur with respect to the payment of any repayment installment payable under Section 4.2(a) hereof, then, upon demand of the Trustee, the Company will pay to the Trustee the whole amount that then shall have become due and payable under said Section, with interest (to the extent permitted by law) on the amount at the rate of ten per cent (10%) per annum until paid.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company, the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or in the case of any other similar judicial proceedings relative to the Company, or to the creditors or

property of the Company, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Company, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

SECTION 6.3. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Issuer or the Trustee the reasonable fees of such attorneys and such other expenses so incurred by the Issuer or the Trustee.

SECTION 6.4. NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds shall be deemed third party beneficiaries of all covenants and agreements herein contained.

SECTION 6.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this Agreement should be breached by the Company and thereafter waived by the Issuer or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VII

### OPTIONAL AND MANDATORY PREPAYMENT

#### SECTION 7.1. OBLIGATION TO PREPAY INSTALLMENTS.

The Company agrees that if a Determination of Taxability occurs, then:

(i) any outstanding Bonds held by a requesting holder will be purchased by the Company in whole, within 30 days after receipt by it of such holder's written request, at a price equal to the sum of:

(x) the principal amount thereof, plus

(y) interest accrued thereon to the date of purchase; and

(ii) as part of the purchase price and/or as an indemnity to each holder and former holder of a Bond, the Company will pay to each holder or former holder an amount (in addition to all amounts due pursuant to paragraph (i) above) equal to the sum of:

(w) the interest paid and payable on the Bonds for the Inclusion Period (as defined below), plus

(x) an additional amount (expressed as a percentage of the principal amount), computed as follows:

<u>Date of Purchase</u>	<u>Additional Payment (Percentage of Principal Amount)</u>
Before March 1, 1981	105%
March 1, 1981 - February 28, 1982	104
March 1, 1982 - February 28, 1990	103
March 1, 1990 and thereafter	100

plus,

- (y) the reasonable fees and expenses of the Trustee and each holder or former holder of the Bonds and any other expenses incurred in obtaining the amounts for which the Company may be responsible under this Section.

"Inclusion Period" means with respect to each holder or former holder of a Bond the period beginning on the date of the Event of Taxability and ending upon the earlier of the date of transfer, purchase by the Company or redemption of the Bonds.

Requests to the Company pursuant to this Section 7.1 shall be addressed to it at the address specified in Section 8.1 hereof. Requests by the holder or former holder of any Bond for amounts due to it under this Section 7.1 in respect of any Bond may be made in part on more than one occasion, it being understood, for example, that a request as to amounts due under clause (w) of paragraph (ii) of this Section may be submitted at one time and a request or requests as to amounts due under clauses (x) and (y) of paragraph (ii) of this Section may be submitted at another time. Amounts payable in respect of any request in part shall be paid by the Company within ten days after the receipt of such request.

Notwithstanding the earlier termination of this Agreement if such a Determination of Taxability is made subsequent to the payment in full of any or all of the Bonds, the Company agrees to pay any additional amounts which would have been required to be paid in accordance with this Section had such a Determination of Taxability been made prior to payment in full of any or all of such Bonds.

An "Event of Taxability" shall mean:

- (a) the paying or incurring of capital expenditures (other than those mentioned in Section 103(b)(6)(F) of the Code) with respect to "facilities" described in Section 103(b)(6)(E) of the Code, or which would be considered "contiguous or integrated" facilities under Section 103(b)(6)(E) of the Code or the regulations proposed or promulgated thereunder, in an amount in excess of the amount permitted in Section 103(b)(6)(D) of the Code, which has the effect of causing the interest payable on the Bonds to become includable in the gross income for Federal

income tax purposes of the holder or owners of the Bonds; or

(b) the taking of any action by the Company, or the failure of the Company to take any action, or any misrepresentation of the Company contained in this Agreement, or in any certificate of the Company required to be delivered by this Agreement or in connection with the issuance, sale or delivery of the Bonds, which such act or omission or misrepresentation has the effect of causing the interest payable on the Bonds to become includable in the gross income for Federal income tax purposes of the holders or owners of the Bonds.

A "Determination of Taxability" shall be deemed to have occurred on the first to occur of the following:

(a) the date when the Company files with the Trustee (in compliance with its obligations under this Agreement) any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations Section 1.103-10(b)(2)(vi)(c), as the same may be amended or supplemented, or otherwise) which discloses that an Event of Taxability shall have in fact occurred (a "Supplemental Statement");

(b) that date when the Company shall be advised in writing by the Commissioner or any District Director of Internal Revenue that, based upon any filings of the Company or upon any review or audit of the Company, or upon any other ground whatsoever, an Event of Taxability shall have occurred;

(c) that date when the Company shall receive (i) the notice described in clause (i) of subparagraph (d), or (ii) notice from the Commissioner or any District Director of Internal Revenue which advises that the interest on the Bonds is includable in the gross income of any holder or owner of a Bond due to the occurrence of an Event of Taxability; provided, however, that no Determination of Taxability shall occur under subparagraph (b) or this subparagraph (c) unless the events set forth in subparagraph (d) shall have occurred;

(d) each Bondholder agrees that (i) it will give the Company notice of any so-called "30-day letter" or other proposed adjustment of such holder's Federal income taxes by reason of the exclusion of interest on the Bonds from such holder's taxable income, and (ii) if requested by the Company, it will appeal such proposed adjustment to the Appeals level of the Internal Revenue Service provided that such holder and

the Company shall have first received an opinion of nationally recognized tax counsel who is acceptable to such holder to the effect that there is a meritorious defense to the determination by the Internal Revenue Service that interest on the Bonds is includible in such holder's taxable income. The Company shall have the right to advise and consult with attorneys for such holder, to submit memoranda or briefs and, to the extent permitted by applicable law or rule or regulation, to attend conferences and to participate in any negotiations or proceedings relating to or in connection with any such appeal (and any such holder agrees that it will give the Company notice of any conferences with officers of or attorneys for the Internal Revenue Service at which the proposed adjustment will be discussed), provided that such Bondholder shall have the right to control the proceedings and to make the final decision with respect to any settlement of the proposed adjustment. The Company agrees to pay all expenses incurred by any Bondholder in connection with such appeal which are properly allocable to the appeal of the issue of the taxability of interest on the Bonds.

SECTION 7.2. OPTIONS TO PREPAY INSTALLMENTS. The Company shall have the option to prepay the installments payable hereunder in whole, but not in part, if any of the following shall have occurred:

(a) The Project shall have been damaged or destroyed (in whole or in part) by fire or other casualty to such extent that, in the Company's reasonable judgment, it is not practicable or desirable to rebuild, repair or restore the Project;

(b) Title to, or the temporary use of, all or substantially all the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person, firm or corporation acting under governmental authority (including such a taking or takings as results or is likely to result in the Company being thereby prevented from carrying on its normal operations at the Project);



(c) As a result of any changes in the Constitution of the State of Indiana or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Company in good faith, this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in this Agreement, or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the Company, including without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Agreement;

(d) Changes in the economic availability of labor, raw materials, energy sources, operating supplies or facilities necessary for the operation of the Project shall have occurred or such technological or other changes shall have occurred which, in the Company's reasonable judgment, render the Project uneconomic for the Company's purposes and operations; and

(e) There is legal curtailment of the Company's use or occupancy of all or substantially all of the Project for any reason other than the event set forth in subparagraph (b) hereof.

Prior to exercising any option under (a), (b), (c), (d) or (e) above, the Company shall deliver to the Issuer and the Trustee a certificate executed by the Company's Chief Financial Officer stating (i) the event giving rise to the exercise of its option to prepay installments payable under the Note, (ii) that it has directed the Trustee to redeem the Bonds in accordance with Section 3.1 of the Indenture and (iii) that as a result of the event stated in clause (i), the Company has discontinued, or at the earliest practicable date will discontinue, its operation of the Project.

SECTION 7.3. AMOUNT OF PREPAYMENT UNDER SECTIONS 7.1 AND 7.2. In the case of a prepayment of the loan pursuant to Sections 7.1 (if no Additional Bonds are then outstanding) or 7.2 hereof, the amount to be prepaid (which shall fully discharge the obligation of the Company to make payments hereunder) will be a sum sufficient, together with other funds deposited with Trustee and available for such purpose, to pay (1) the principal of all Bonds then outstanding, plus interest accrued and to accrue to the next date upon which the Bonds may be redeemed, plus premium, if any, pursuant to the Indenture, (2) all reasonable and necessary fees and expenses of the Trustee and any Paying Agent accrued and to accrue through final payment of the Bonds and (3) all other liabilities of the Company accrued and to accrue under this Agreement.

SECTION 7.4. ADDITIONAL OPTION TO PREPAY INSTALLMENTS. The Company shall also have the option to prepay all or any part of the installments payable under the Note at any time. If the Company exercises its option to prepay all installments payable hereunder the amount of such payment shall be an amount sufficient to pay all the outstanding Bonds at their stated maturity or on a specified redemption date in accordance with the provisions of the Indenture (including, without limitation) principal, interest to maturity on the specified redemption date, as the case may be, premium, if any, expenses of redemption and Trustees' and Paying Agents' fees and expenses and any and all sums then due to the Issuer under this Agreement. If the Company exercises its option to prepay all or any portion of the installments payable under this Agreement, said amount shall be deposited in the Bond Fund and shall be used to redeem Bonds at the prices set forth in Section 3.1 of the Indenture.

The Indenture provides that the Bonds are not subject to redemption prior to stated maturities until March 1, 1990, except in the circumstances provided therein.

SECTION 7.5. NOTICE OF PREPAYMENT. To exercise an option granted in or an obligation required by this Article VII, the Company shall give written notice to the Issuer and the Trustee which shall specify therein the date upon which prepayment of installments will be made, which date shall be not less than 45 days nor more than 90 days from the date the notice is mailed. Issuer, at the request of the Company, shall forthwith take all steps (other than the payment of the money required for such redemption) necessary under the applicable provisions of the Indenture to effect redemption of all or part of the then outstanding Bonds, as may be the case, on the

earliest practicable date thereafter on which such redemption may be made under applicable provisions of the Indenture.

**SECTION 7.6. REDEMPTION OF BONDS WITH PREPAYMENT MONIES.** By virtue of the assignment of the rights of the Issuer under this Agreement to the Trustee as is provided in Section 4.4 hereof, the Company agrees to and shall pay any amount required to be paid by it under this Article VII directly to the Trustee. The Trustee shall use the moneys so paid to it by the Company to redeem the Bonds on the date set for prepayment of installments pursuant to Section 7.5 hereof.

## ARTICLE VIII

### MISCELLANEOUS

**SECTION 8.1. NOTICES.** All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the second day following the day on which the same have been mailed by certified mail, postage prepaid, addressed as follows: if to the Issuer, at City-County Building, Main Street, Fort Wayne, Indiana 46802; if to the Company, at One Hollow Tree Lane, Elmhurst, Illinois 60126, Attention: Treasurer; and if to the Trustee, at 110 West Berry Street, Fort Wayne, Indiana 46802, Attention: Trust Department. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Trustee. The Issuer, the Company and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**SECTION 8.2. ASSIGNMENTS.** Neither this Agreement nor the Note may be assigned by either party without consent of the other and the Trustee, except that the Issuer shall assign to the Trustee its rights under this Agreement and the Note as provided by Section 4.4 hereof and the Company may assign to any transferee or any surviving or resulting corporation its rights under this Agreement.

**SECTION 8.3. SEVERABILITY.** If any provision of this Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

SECTION 8.4. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that for purposes of perfecting a security interest in this Agreement by the Trustee under Article 9 of the Wisconsin Uniform Commercial Code, only the counterpart delivered, pledged, and assigned to the Trustee shall be deemed the original.

SECTION 8.5. AMOUNTS REMAINING IN BOND FUND. It is agreed by the parties hereto that after payment in full of (i) the Bonds (or the provision for payment thereof having been made in accordance with the provisions of the Indenture), (ii) the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture and (iii) all other amounts required to be paid under this Agreement, the Mortgage and the Indenture, any amounts remaining in the Bond Fund shall belong to and be paid to the Company by the Trustee.

SECTION 8.6. AMENDMENTS, CHANGES AND MODIFICATIONS. Except as otherwise provided in this Agreement or the Indenture, subsequent to the initial issuance of Bonds and prior to their payment in full (or provision for payment thereof having been made in accordance with the provisions of the Indenture), this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee.

SECTION 8.7. GOVERNING LAW. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Indiana.

SECTION 8.8. AUTHORIZED COMPANY REPRESENTATIVES. Whenever under the provisions of this Agreement the approval of the Company is required or the Company is required to take some action at the request of the Issuer, such approval or such request shall be given for the Company by the Authorized Company Representative, and the Issuer and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

SECTION 8.9. TERM OF THE AGREEMENT. This Agreement shall be in full force and effect from the date hereof and shall continue in effect so long as any Bonds are outstanding or the Trustee shall hold any moneys under Article VIII of the Indenture, whichever is later. All representations and certifications by the Company as to all matters affecting the

tax-exempt status of the Bonds shall survive the termination of this Agreement.

SECTION 8.10. BINDING EFFECT. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns; subject, however, to the limitations contained in Sections 4.4 and 5.9 hereof.

IN WITNESS WHEREOF, City of Fort Wayne, Indiana and Keebler Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk

KEEBLER COMPANY

By \_\_\_\_\_  
Vice President

(SEAL)

Attest:

\_\_\_\_\_  
Secretary

EXHIBIT A  
DESCRIPTION OF THE PROJECT

MAR 11 1980

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CITY OF FORT WAYNE, INDIANA

TO

FORT WAYNE NATIONAL BANK

As Trustee

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INDENTURE OF TRUST

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Dated as of March 1, 1980

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# INDENTURE OF TRUST

## TABLE OF CONTENTS

(This Table of Contents is not a part of this Indenture of Trust and is only for convenience of reference.)

	<u>Page</u>
PARTIES .....	1
RECITALS .....	1
GRANTING CLAUSES .....	14
ARTICLE I	
DEFINITIONS .....	16
ARTICLE II	
THE BONDS	
SECTION 2.1. Authorized Amount of Bonds .....	18
SECTION 2.2. Issuance of Series 1980 Bonds .....	19
SECTION 2.3. Execution; Limited Obligation .....	19
SECTION 2.4. Authentication .....	20
SECTION 2.5. Form and Place of Payment of Bonds .....	21
SECTION 2.6. Delivery of Series 1980 Bonds .....	22
SECTION 2.7. Mutilated, Lost, Stolen or Destroyed Bonds .	22
SECTION 2.8. Registration and Exchange of Bonds; Persons Treated as Owners .....	23
SECTION 2.9. Cancellation of Bonds .....	25
SECTION 2.10. Issuance of Additional Bonds .....	25
ARTICLE III	
REDEMPTION OF BONDS BEFORE MATURITY	
SECTION 3.1. Certain Redemption Dates and Prices .....	27
SECTION 3.2. Partial Redemption of Fully Registered Bonds .....	29
SECTION 3.3. Notice of Redemption .....	30
SECTION 3.4. Redemption Payments .....	30
SECTION 3.5. Cancellation .....	31
SECTION 3.6. Unpaid Coupons .....	31
SECTION 3.7. Sinking Fund .....	31



SECTION 3.8.	Direct Payment .....	32
--------------	----------------------	----

#### ARTICLE IV

##### GENERAL COVENANTS

SECTION 4.1.	Payment of Principal, Premium, if any, and Interest .....	33
SECTION 4.2.	Performance of Covenants; The Issuer .....	33
SECTION 4.3.	Right to Payments under Agreement; Instruments of Further Assurance .....	34
SECTION 4.4.	Recordation and Other Instruments .....	34
SECTION 4.5.	Inspection of Project Books .....	34
SECTION 4.6.	List of Bondholders .....	35
SECTION 4.7.	Rights under Agreement .....	35
SECTION 4.8.	Prohibited Activities .....	35

#### ARTICLE V

##### REVENUES AND FUNDS

SECTION 5.1.	Source of Payment of Bonds .....	36
SECTION 5.2.	Creation of Bond Fund .....	36
SECTION 5.3.	Payments into Bond Fund .....	36
SECTION 5.4.	Use of Moneys in Bond Fund .....	37
SECTION 5.5.	Authorization to Trustee to Withdraw Bond Fund Moneys .....	37
SECTION 5.6.	Construction Fund .....	37
SECTION 5.7.	Payment into Construction Fund; Disbursements .....	37
SECTION 5.8.	Completion of Project .....	38
SECTION 5.9.	Transfer of Construction Fund .....	38
SECTION 5.10.	Non-presentment of Bonds or Coupons .....	38
SECTION 5.11.	Moneys to be Held in Trust .....	39
SECTION 5.12.	Repayment to Company from Bond Fund .....	39
SECTION 5.13.	Additional Payments Under the Agreement .....	39
SECTION 5.14.	Moneys Deposited Pursuant to Section 7.1 of the Agreement .....	39

#### ARTICLE VI

##### INVESTMENT OF MONEYS

SECTION 6.1.	Investment of Moneys .....	40
--------------	----------------------------	----

## ARTICLE VII

SUBORDINATION .....	40
---------------------	----

## ARTICLE VIII

DISCHARGE OF LIEN .....	41
-------------------------	----

## ARTICLE IX

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

SECTION 9.1.	Defaults; Events of Default .....	43
SECTION 9.2.	Acceleration .....	44
SECTION 9.3.	Other Remedies; Rights of Bondholders .....	44
SECTION 9.4.	Right of Bondholders to Direct Proceedings .	45
SECTION 9.5.	Appointment of Receivers .....	45
SECTION 9.6.	Waiver .....	46
SECTION 9.7.	Application of Moneys .....	46
SECTION 9.8.	Remedies Vested in Trustee .....	48
SECTION 9.9.	Rights and Remedies of Bondholders .....	48
SECTION 9.10.	Termination of Proceedings .....	49
SECTION 9.11.	Waivers of Events of Default .....	49
SECTION 9.12.	Notice of Defaults under Section 9.1(c); Opportunity of Issuer and Company to Cure Such Defaults .....	50

## ARTICLE X

### THE TRUSTEE AND PAYING AGENTS

SECTION 10.1.	Acceptance of Trusts .....	50
SECTION 10.2.	Fees, Charges and Expenses of Trustee and Paying Agents .....	54
SECTION 10.3.	Notice to Bondholders if Default Occurs ....	54
SECTION 10.4.	Intervention by Trustee .....	54
SECTION 10.5.	Successor Trustee .....	54
SECTION 10.6.	Resignation by Trustee .....	55
SECTION 10.7.	Removal of Trustee .....	55
SECTION 10.8.	Appointment of Successor Trustee by Bondholders .....	55
SECTION 10.9.	Concerning Any Successor Trustee .....	55
SECTION 10.10.	Designation and Succession of Paying Agents .....	56
SECTION 10.11.	Appointment of Co-Trustee .....	56

## ARTICLE XI

### SUPPLEMENTAL INDENTURES

SECTION 11.1	Supplemental Indentures Not Requiring Consent of Bondholders .....	58
SECTION 11.2.	Supplemental Indentures Requiring Consent of Bondholders .....	58

## ARTICLE XII

### AMENDMENT OF AGREEMENT OR MORTGAGE

SECTION 12.1.	Amendments, etc., to Agreement or Mortgage Not Requiring Consent of Bondholders .....	60
SECTION 12.2.	Amendments, etc., to Agreement or Mortgage Requiring Consent of Bondholders .....	60

## ARTICLE XIII

### MISCELLANEOUS

SECTION 13.1.	Consents, etc., of Bondholders .....	61
SECTION 13.2.	Limitation of Rights .....	63
SECTION 13.3.	Severability .....	63
SECTION 13.4.	Notices .....	63
SECTION 13.5.	Payments Due on Saturdays, Sundays and Holidays .....	63
SECTION 13.6.	Action by Company .....	64
SECTION 13.7.	Counterparts .....	64
SECTION 13.8.	Applicable Provisions of Law .....	64
SECTION 13.9.	Captions .....	64
TESTIMONIUM .....		64
SIGNATURES AND SEALS .....		64

## INDENTURE OF TRUST

THIS INDENTURE OF TRUST dated as of March 1, 1980, by and between City of Fort Wayne, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana, party of the first part (hereinafter sometimes referred to as the "Issuer"), and Fort Wayne National Bank, a corporation duly organized, existing and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States of America with its principal office, domicile and post office address located at 110 West Berry Street, Fort Wayne, Indiana 46802, as Trustee (hereinafter sometimes referred to as the "Trustee"), party of the second part,

### W I T N E S S E T H:

WHEREAS, the Issuer is authorized by IC 18-6-4.5, as supplemented and amended (the "Act") to finance "economic development facilities" for the purposes set forth in the Act; and

WHEREAS, the Act provides that the Issuer may issue its revenue bonds payable solely and only from the revenues derived from such projects to provide funds to pay the costs thereof; and

WHEREAS, the Issuer has made the necessary arrangements with Keebler Company, a Delaware corporation duly authorized to do business in the State of Indiana (hereinafter sometimes referred to as the "Company"), for the financing of a warehouse and distribution facility (the "Project") for use by the Company in the Issuer, which will be of the character and accomplish the purposes provided by the Act; and

WHEREAS, the Issuer has entered into a Financing Agreement with the Company specifying the terms and conditions of the acquisition and completion of construction by the Company of the Project, the loan of the proceeds of its Industrial Development Revenue Bonds (Keebler Company Project), Series 1980 (the "Series 1980 Bonds") to the Company for such purpose, and the repayment of said loan; and

WHEREAS, it has been determined that the Series 1980 Bonds in the principal amount of \$825,000 should be issued, sold and delivered in the first instance to provide proceeds for loan to the Company to pay the cost of the Project; and

WHEREAS, the Issuer has contracted for the sale and delivery of the Series 1980 Bonds to be issued in the aggregate principal amount of \$825,000 as herein provided; and

WHEREAS, all Bonds issued under the Indenture will be secured by a pledge and assignment of the aforesaid Financing Agreement and a pledge and assignment of the Issuer's rights under a Mortgage and Security Agreement, dated as of March 1, 1980 from the Company to the Issuer, and a Promissory Note of the Company executed to secure the obligations of the Company under said Financing Agreement; and

WHEREAS, it is anticipated that additional amounts may be necessary to complete or improve the Project and as a result, provisions should be made for the issuance of additional parity bonds from time to time (hereinafter sometimes referred to as the "Additional Bonds"); and

WHEREAS, the coupon Series 1980 Bonds, the interest coupons to be attached to the coupon Series 1980 Bonds and the Trustee's certificate of authentication to be endorsed on such Series 1980 Bonds are to be in substantially the following form, with appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

(FORM OF COUPON SERIES 1980 BONDS)

UNITED STATES OF AMERICA

STATE OF INDIANA

CITY OF FORT WAYNE, INDIANA

INDUSTRIAL DEVELOPMENT REVENUE BOND

(KEEBLER COMPANY PROJECT), SERIES 1980

No. \_\_\_\_\_

\$5,000

[1] KNOW ALL MEN BY THESE PRESENTS that City of Fort Wayne, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana (the "Issuer"), for value received, promises to pay from the source and as hereinafter provided, to bearer, or, if this Bond be registered, to the registered owner hereof, on March 1, 2005, the principal sum of Five Thousand Dollars and to pay interest (computed on the basis of a 360-day year consisting of twelve 30-day months)

on said sum from the same source and from the date hereof at the rate of eight and five-eighths per cent (8-5/8%) per annum semiannually on March 1 and September 1 of each year commencing September 1, 1980 until said principal sum becomes due and payable and at the rate of ten per cent (10%) per annum on any overdue principal and premium and (to the extent that such interest shall be legally enforceable) on any overdue installment of interest until paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may become applicable hereto, both principal of and interest on this Bond being payable in lawful money of the United States of America at the principal corporate trust office of Fort Wayne National Bank, in Fort Wayne, Indiana, as Trustee, or its successor in trust (the "Trustee").

[2] This Bond is one of an authorized series of Bonds in the aggregate principal amount of \$825,000 (the "Series 1980 Bonds") issued for the purpose of funding a loan by the Issuer to Keebler Company (the "Company"), a Delaware corporation authorized to do business in the State of Indiana, for the purpose of financing the cost of a certain warehouse and distribution facilities (the "Project") and the payment of necessary costs incidental thereto.

[3] The Series 1980 Bonds are all issued under and are equally and ratably secured by and entitled to the protection of an Indenture of Trust dated as of March 1, 1980 (which indenture, as from time to time amended and supplemented, is herein referred to as the "Indenture"), duly executed and delivered by the Issuer to the Trustee. The Indenture provides that the Issuer may issue Additional Bonds (the "Additional Bonds") from time to time under certain terms and conditions contained in the Indenture, and if issued, such Additional Bonds will rank pari passu with the Series 1980 Bonds and be equally and ratably secured by and entitled to the protection of the Indenture (the Series 1980 Bonds and the Additional Bonds being herein referred to as the "Bonds"). Reference is hereby made to the Indenture for a description of the rights, duties and obligations of the Issuer and the Trustee and the rights of the holders of the Bonds and the terms upon which the Bonds are issued and secured. The terms and conditions of the acquisition and completion of construction of the Project, the loan of the proceeds of the Bonds to the Company for such purpose, and the repayment of said loan are contained in a Financing Agreement dated as of March 1, 1980 (which agreement, as from time to time amended and supplemented, is hereinafter referred to as the "Agreement"). To secure performance of its

obligations under the Agreement, the Company has granted to the Issuer a mortgage and security interest in the real estate and improvements thereon and equipment forming a part of the Project pursuant to a Mortgage and Security Agreement, dated as of March 1, 1980 from the Company to the Issuer and the Issuer has assigned and pledged its rights in said Mortgage and Security Agreement to the Trustee pursuant to the Indenture as further security for the Bonds.

[4] This Bond and appurtenant coupons are fully negotiable, but this Bond may be registered as to payment of principal on the registration books of the Issuer in the principal corporate trust office of the Trustee in accordance with the provisions endorsed on the reverse side hereof. The principal of this Bond, if registered, unless registered to bearer, shall be payable only to the registered owner or his legal representative. Interest accruing on this Bond will be paid only on presentation and surrender of the attached interest coupons as they respectively become due, and registration of this Bond as to principal as aforesaid will not affect the transferability by delivery of such coupons.

[5] The Bonds are issuable as coupon Bonds, registrable as to principal only, in the denomination of \$500 and as fully registered Bonds without coupons in denominations of \$500 and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Indenture, registered Bonds without coupons may be exchanged for a like aggregate principal amount of coupon Bonds of the same series and the same maturity bearing all unmatured coupons (and any matured coupons in default) or for a like aggregate principal amount of registered Bonds without coupons of the same series and the same maturity of other authorized denominations, and coupon Bonds bearing all unmatured coupons (and any matured coupons in default) may be exchanged for a like aggregate principal amount of registered Bonds without coupons of the same series and the same maturity of authorized denominations.

[6] This Bond and all other Bonds of the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and laws of the State of Indiana and particularly IC 18-6-4.5, as supplemented and amended (the "Act") and pursuant to proceedings of the Common Council of the Issuer authorizing the execution and delivery of the Indenture. The Bonds and the coupons appertaining to the coupon Bonds are issued pursuant to the Act and shall not in any respect be a general obligation of the Issuer nor shall they be payable in any manner

from funds raised by taxation. No Bonds issued by the Issuer under the Act may be general obligations of the Issuer, but are limited obligations of the Issuer, payable solely out of the revenues and receipts derived from the Agreement. Such payments are to be paid to the Trustee for the account of the Issuer and deposited in a special trust fund account created by the Issuer, maintained by the Trustee and designated "City of Fort Wayne, Indiana, Industrial Development Revenue Bond Fund (Keebler Company Project)", and have been and are hereby duly pledged for that purpose, and in addition, the rights of the Issuer under the Agreement have been pledged and assigned to the Trustee to secure the payment of such principal, interest and premium, if any, under the Indenture.

[7] The Series 1980 Bonds are non-callable for redemption prior to March 1, 1990, except in the event (1) the Company shall be obligated to prepay installments payable under the Agreement with respect to the Series 1980 Bonds and to cause the Series 1980 Bonds to be redeemed as provided in Section 7.1 of the Agreement upon the occurrence of a Determination of Taxability (as defined in the Agreement) or (2) the Company shall elect to exercise its option to prepay installments payable under the Agreement and to cause the Series 1980 Bonds to be redeemed as provided in Section 7.2 of the Agreement. If called for redemption as a result of a Determination of Taxability as referred to in (1) above, the Series 1980 Bonds shall be subject to redemption by the Issuer at any time as a whole at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date plus,

(i) the interest paid and payable on the Series 1980 Bonds for the Inclusion Period (as defined in the Agreement), plus

(ii) an additional amount (expressed as a percentage of the principal amount), computed as follows:

<u>Date of Redemption</u>	<u>Additional Payment (Percentage of Principal Amount)</u>
Before March 1, 1981	105%
March 1, 1981 - February 28, 1982	104
March 1, 1982 - February 28, 1990	103
March 1, 1990 and thereafter	100



If called for redemption as a result of the event referred to in (2) above, the Series 1980 Bonds shall be subject to redemption by the Issuer at any time in whole, but not in part, at 100% of the principal amount redeemed plus accrued interest to the redemption date.

[8] Any person who was a Series 1980 Bondholder both at the time of an Event of Taxability (as defined in the Agreement) and at the maturity or redemption of such Bond prior to a redemption due to a Determination of Taxability as aforesaid shall, upon presentation to the Trustee in writing of proof satisfactory to the Trustee that he was a holder of such Bond at such times, be entitled to the premium described in the foregoing paragraph for the Inclusion Period. Any moneys deposited and held by the Trustee for the benefit of such claimants, if any, for five years after the date upon which so deposited shall be repaid to the Company and thereupon and thereafter no such claimant shall have any rights to or in respect of such moneys.

[9] In addition, the Series 1980 Bonds are subject to mandatory redemption in part prior to maturity, in accordance with the sinking fund requirements of Section 3.7 of the Indenture, by lot in such manner as may be designated by the Trustee, at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date, in the principal amounts and on the dates set forth below:

<u>March 1</u> <u>of the Year</u>	<u>Principal</u> <u>Amount</u>
1996	\$ 25,000
1997	25,000
1998	25,000
1999	50,000
2000	50,000
2001	62,500
2002	87,500
2003	100,000
2004	200,000
2005	200,000

[10] The Series 1980 Bonds are also subject to redemption by the Issuer prior to maturity on any interest payment date on or after March 1, 1990 in whole or in part (less than all of such Bonds to be selected by lot in such manner as may be designated by the Trustee), at the redemption prices (expressed as percentages of principal amount) set forth in the table below plus accrued interest to the redemption date:

<u>Redemption Date</u> <u>(dates inclusive)</u>	<u>Redemption</u> <u>Price</u>
March 1, 1990 through February 28, 1991	103.00
March 1, 1991 through February 29, 1992	102.80
March 1, 1992 through February 28, 1993	102.60
March 1, 1993 through February 28, 1994	102.40
March 1, 1994 through February 28, 1995	102.20
March 1, 1995 through February 29, 1996	102.00
March 1, 1996 through February 28, 1997	101.80
March 1, 1997 through February 28, 1998	101.60
March 1, 1998 through February 28, 1999	101.40
March 1, 1999 through February 29, 2000	101.20
March 1, 2000 through February 28, 2001	101.00
March 1, 2001 through February 28, 2002	100.80
March 1, 2002 through February 28, 2003	100.60
March 1, 2003 through February 29, 2004	100.40
March 1, 2004 through February 28, 2005	100.20

[11] In the event any of the Bonds or portions thereof (which shall be \$500 or any integral multiple thereof) are called for redemption as aforesaid, notice thereof identifying the Bonds or portions thereof to be redeemed will be given by the Trustee by publication at least twice in a newspaper or financial journal of general circulation published in the City of New York, New York, the first of which shall be published not less than thirty days prior to the redemption date, and in the case of the redemption of Bonds at the time registered as to principal (except to bearer) or fully registered, upon mailing a copy of the redemption notice by registered or certified mail at least thirty days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed in whole or in part at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for the redemption of Bonds. If all of the Bonds in whole or in part to be redeemed are at that time registered as to principal (except to bearer) or fully registered, notice by mailing given by registered or certified mail to the owner or

owners thereof not less than thirty days prior to the date fixed for redemption shall be sufficient and published notice of the call for redemption need not be given; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Bond with respect to which no such failure has occurred. All Bonds so called for redemption will cease to bear interest after the specified redemption date provided funds for their redemption are on deposit at the place of payment at that time. If, because of the temporary or permanent suspension of the publication or general circulation of any newspaper or financial journal or for any other reason, it is impossible or impractical to publish such notice of call for redemption in the manner herein provided, then such publication in lieu thereof as shall be determined by the Trustee shall constitute a sufficient publication of notice.

[12] The holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. The Indenture prescribes the manner in which it may be discharged, including a provision that the Bonds shall be deemed to be paid if Governmental Obligations, as defined therein, maturing as to principal and interest in such amounts and at such times as will provide sufficient funds to pay the principal of and interest and premium, if any, on the Bonds and all fees and expenses of the Trustee and any paying agent, and all other liabilities of the Company under the Agreement, shall have been deposited with the Trustee, after which the Bonds shall no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of any such payment from such Governmental Obligations.

[13] The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the holders of the Bonds at any time by the Issuer with the consent of the holders of a majority in aggregate principal amount of the Bonds at the time outstanding, as defined in the

Indenture. Any such consent or waiver by the holder of this Bond shall be conclusive and binding upon such holder and upon all future holders of this Bond and of any Bond issued upon the transfer or exchange of this Bond whether or not notation of such consent or waiver is made upon this Bond. The Indenture also contains provisions permitting the Trustee to enter into certain supplemental indentures without the consent of the holders of the Bonds and to waive certain past defaults under the Indenture and their consequences.

[14] No recourse shall be had for the payment of the principal of, premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any past, present or future officer or employee of the Issuer, or any incorporator, officer, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, officer, director or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and the issuance of any of the Bonds.

[15] It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; that the issuance of this Bond and the issue of which it forms a part, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

[16] This Bond and the coupons appertaining hereto shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been executed by the Trustee.

[17] This Bond is issued with the intent that the laws of the State of Indiana will govern its construction.

[18] IN WITNESS WHEREOF, City of Fort Wayne, Indiana, has caused this Bond to be executed in its name by the facsimile signature of its Mayor and attested by the facsimile signature of its City Clerk, and its corporate seal to be impressed or imprinted hereon, and has caused the interest coupons attached hereto to be executed by the facsimile signatures of said officers, all as of March 1, 1980.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

[SEAL]

(Form of Trustee's Certificate of Authentication)

This Bond is one of the Bonds of the issue described in the within mentioned Indenture of Trust.

FORT WAYNE NATIONAL BANK,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

(Form of Interest Coupon)

No.

\$

On the first day of \_\_\_\_\_, \_\_\_\_\_, City of Fort Wayne, Indiana (unless the Bond to which this coupon appertains shall have been duly called for previous redemption and provision for the payment thereof duly made) will pay from the source and as designated in the Bond, in lawful money of the United States of America, to bearer, subject to the provisions of the within mentioned Indenture and upon presentation and surrender of this coupon at the principal corporate trust office of Fort Wayne National Bank, in Fort Wayne, Indiana, as Trustee, or its successor in trust, the amount shown hereon, as provided in and being semiannual interest then due on its Industrial

Development Revenue Bond (Keebler Company Project), Series 1980,  
dated March 1, 1980, numbered \_\_\_\_\_.

\_\_\_\_\_  
(Facsimile signature)

Mayor

\_\_\_\_\_  
(Facsimile signature)

City Clerk

#### PROVISION FOR REGISTRATION

The within Bond may be registered in the name of the holder on books kept by the Trustee as to principal only, such registration being noted hereon by the Trustee in the registration blank below, after which no transfer shall be valid unless made on said books at the request of the registered holder or attorney duly authorized in writing, and such transfer is similarly noted in the registration blank below, but it may be discharged from registration by being so transferred to bearer, after which it shall be transferable by delivery, but it may be again registered as before. The registration of this Bond as to principal shall not restrain the negotiability of the coupons by delivery.

Date of Registration	Name of Registered Owner	Signature of Trustee
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:

and

WHEREAS, the form of the fully registered Series 1980 Bonds shall be identical with the form of the coupon Series 1980 Bonds except that the first, fourth, sixteenth and eighteenth paragraphs and the forms of interest coupons and Provision for Registration of the form of the coupon Series 1980 Bonds should be omitted, and there should be substituted in the form of the fully registered Series 1980 Bonds in lieu of the corresponding paragraphs of the coupon Series 1980 Bonds the following paragraphs:

[the following paragraph to be inserted to replace the first paragraph of the coupon Series 1980 Bond Form]

KNOW ALL MEN BY THESE PRESENTS that City of Fort Wayne, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana (the "Issuer"), for value received, promises to pay from the source and as hereinafter provided, to \_\_\_\_\_ or registered assigns, on March 1, 2005, the principal sum of \_\_\_\_\_ Dollars and in like manner to pay interest (computed on the basis of a 360-day year consisting of twelve 30-day months) on said sum from the date hereof at the rate of eight and five-eighths per cent (8-5/8%) per annum semiannually on each March 1 and September 1 hereafter until said principal sum becomes due and payable and at the rate of ten per cent (10%) per annum on any overdue principal and premium and (to the extent that such interest shall be legally enforceable) on any overdue installment of interest until paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may become applicable hereto, principal of this Bond being payable in lawful money of the United States of America at the principal corporate trust office of Fort Wayne National Bank, in Fort Wayne, Indiana, as Trustee, or its successor in trust (the "Trustee"), except as otherwise provided in the Indenture with respect to Home Office Payment. Interest on this Bond is payable to the registered owner hereof by check or draft of the Trustee, to be mailed to such registered owner at his address as it appears on the registration books of the Issuer or at such other address as is furnished to the Trustee in writing by such registered owner, except as otherwise provided in the Indenture with respect to Home Office Payment.

[the following paragraph to be inserted to replace the fourth paragraph of the coupon Series 1980 Bond form]

This Bond is transferable by the registered holder hereof in person or by his attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds without coupons of the same series and the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor. The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment

of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes and neither the Issuer nor the Trustee nor any paying agent shall be affected by any notice to the contrary.

[the following paragraph to be inserted to replace the sixteenth paragraph of the coupon Series 1980 Bond form]

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

[the following paragraph to be inserted to replace the eighteenth paragraph of the coupon Series 1980 Bond form]

IN WITNESS WHEREOF, City of Fort Wayne, Indiana has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk and its corporate seal to be impressed or imprinted hereon, all as of the first day of \_\_\_\_\_, \_\_\_\_.

#### TABLE OF PREPAYMENTS

Upon all partial prepayments of principal the within Bond shall be surrendered to the Trustee for the appropriate endorsement by it on the table below, unless there shall be in effect, as provided in the within-mentioned Indenture, a Home Office Payment Agreement, as defined therein. This Bond may be subject to a Home Office Payment Agreement and any purchaser or this Bond should verify with the Trustee the principal balance outstanding prior to the purchase thereof.

<u>Date</u>	<u>Amount Paid or Prepaid</u>	<u>Remaining Unpaid Balance</u>	<u>Signature</u>
-------------	-----------------------------------	-------------------------------------	------------------



\* \* \* \* \*

WHEREAS all things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the amounts assigned and pledged to the payment of the principal of, premium, if any, and interest on the Bonds and a valid assignment of the rights of Issuer under the Agreement and the Mortgage have been done and performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

#### GRANTING CLAUSES

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH;

That the Issuer in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders and owners thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable considerations, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, sell, convey, assign and pledge, and grant a security interest in, to Fort Wayne National Bank, as Trustee, and its successors in trust and assigns forever, to the extent provided in this Indenture:

#### GRANTING CLAUSE FIRST

All of the rights and interest of the Issuer in and to the Financing Agreement dated as of March 1, 1980 between the Issuer and Keebler Company (including, but not limited to the Promissory Note of Keebler Company issued thereunder and all other Revenues, as hereinafter defined, derived pursuant to Section 4.2(a) thereof), except for the rights of the Issuer under Sections 4.2(c) and 5.2 of the said Financing Agreement.

#### GRANTING CLAUSE SECOND

All right and interest of the Issuer in and to the Mortgage and Security Agreement, dated as of March 1, 1980 from the Company to the Issuer, given to secure the obligations of the Company under the Financing Agreement and Promissory Note described in Granting Clause First and all right, title and interest of the Issuer in and to the Mortgaged and secured property referred to in said Mortgage and Security Agreement.

#### GRANTING CLAUSE THIRD

All moneys and securities from time to time held by the Trustee under the terms of this Indenture and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone in its behalf, or with its written consent to the Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future holders and owners of the Bonds, and the bearers of all coupons appertaining thereto, from time to time issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds or coupons appertaining thereto over any of the other Bonds or coupons;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds and the interest coupons appertaining to the Bonds, respectively, according to the true intent and meaning thereof, and shall cause the payments to be made on the Bonds as required under Article IV hereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon (or Governmental Obligations sufficient for that purpose as provided

in Article VIII hereof), and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon the final payment thereof this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture to be and remain in full force and effect.

THIS INDENTURE OF TRUST FURTHER WITNESSETH, and it is expressly declared that, all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said property, rights and interests, including, without limitation, the amounts hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and Issuer has agreed and covenanted, and does hereby agree and covenant with Trustee and with the respective holders and owners of the Bonds or coupons as follows (subject, however, to the provisions of Section 2.3 hereof):

#### ARTICLE I

##### DEFINITIONS

All words and phrases defined in Article I of the Agreement shall have the same meaning in this Indenture. In addition, the following words and phrases shall have the following meanings:

"Agreement" means the Financing Agreement of even date herewith, between the Issuer and the Company and any amendments and supplements thereto.

"Bond" or "Bonds" means one or more of the Industrial Development Revenue Bonds (including Additional Bonds) of the Issuer issued pursuant to this Indenture.

"Bondholder" or "holder" or "owner of the Bonds" means the bearer of any coupon Bond not registered as to principal or registered to bearer and the registered owner of any fully registered Bond or of any coupon Bond registered as to principal (except to bearer).

"Coupon" means any of the coupons issued hereunder evidencing the semiannual installments of interest on the applicable coupon Bond or Bonds.

"Default" or "event of default" means any occurrence or event specified in and defined by Section 9.1 hereof.

"Governmental Obligations" means direct general obligations of, or obligations the payment of the principal and interest of which are unconditionally guaranteed by, the United States of America.

"Home Office Payment Agreement" shall mean any agreement qualifying as a Home Office Payment Agreement under Section 2.5 hereof.

"Inclusion Period" means with respect to each holder or former holder of a Bond, the period beginning on the date of the Event of Taxability (as defined in Section 7.1 of the Agreement) and ending upon the earlier of the date of transfer, purchase by the Company or redemption of the Bonds.

"Note" means the Promissory Note of the Company, dated the date hereof, evidencing the Company's obligation to pay all amounts payable under Section 4.2(a) of the Agreement.

"Outstanding" or "Bonds outstanding" means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds cancelled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the payment or redemption of which cash funds or Governmental Obligations (as defined in Article VIII hereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.7 hereof.

If this Indenture shall have been discharged pursuant to the provisions of Article VIII hereof, no Bonds shall be deemed to be outstanding within the meaning of this provision.

"Paying Agent" means any bank or trust company designated pursuant to this Indenture to serve in addition to the Trustee as the paying agencies or places of payment for the Bonds, and any successors designated pursuant to this Indenture.

"Registered owner" shall mean the person or persons in whose name or names a Bond shall be registered on books of the Issuer kept for that purpose in accordance with the terms of this Indenture.

"Revenues" means all amounts payable pursuant to Section 4.2(a) of the Agreement, including, but not limited to the Note.

"Series 1980 Bonds" means the \$825,000 aggregate principal amount of Bonds authorized to be issued by the Issuer pursuant to the terms and conditions of Sections 2.1 and 2.2 hereof.

"Trust Estate" means the property conveyed to Trustee pursuant to the Granting Clauses hereof.

"Trustee" means Fort Wayne National Bank, in Fort Wayne, Indiana, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

## ARTICLE II

### THE BONDS

SECTION 2.1. Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued is hereby expressly limited to \$825,000, except as provided in Section 2.10 hereof.

**SECTION 2.2. Issuance of Series 1980 Bonds.** The Series 1980 Bonds shall be designated "City of Fort Wayne, Indiana, Industrial Development Revenue Bonds (Keebler Company Project), Series 1980", and shall be issuable as coupon Bonds, registrable as to principal only, in the denomination of \$500. and any integral multiple thereof or as fully registered Bonds in the denomination of \$500 or any integral multiple thereof. Unless the Issuer shall otherwise direct, the fully registered Series 1980 Bonds shall be lettered R and shall be numbered separately from 1 upward, and the coupon Series 1980 Bonds shall be numbered separately from 1 upward.

The coupon Series 1980 Bonds shall be dated March 1, 1980, and shall bear interest from such date payable semiannually on March 1 and September 1 of each year with the first interest payment to be made on September 1, 1980. Fully registered Series 1980 Bonds shall be dated as of March 1 or September 1 next preceding their date of issue, or if issued on a March 1 or September 1, as of such date (provided that, if at the time of issuance interest thereon is in default, they shall be dated as of the date to which interest has been paid), and shall bear interest payable semiannually from their date.

The Series 1980 Bonds shall (a) bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rate of eight and five-eighths per cent (8-5/8%) per annum until the principal thereof becomes due and payable and at the rate of ten per cent (10%) per annum on any overdue principal and premium and (to the extent that such interest shall be legally enforceable) on any overdue installment of interest until paid and (b) mature on March 1, 2005, subject to the provisions of the sinking fund established in Section 3.7 hereof.

**SECTION 2.3. Execution: Limited Obligation.** The Bonds shall be executed on behalf of Issuer with the manual or facsimile signature of its Mayor, and attested by the manual or facsimile signature of its City Clerk and shall have impressed or imprinted thereon the official seal of Issuer or a facsimile thereof. The coupons attached to the coupon Bonds shall bear the facsimile signatures of the City Clerk and Mayor of the Issuer. All authorized facsimile signatures shall have the same force and effect as if manually signed. In case any official whose signature or a facsimile of whose signature shall appear on the Bonds or coupons shall cease to be such official before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all

purposes, the same as if he had remained in office until delivery.

The Bonds, together with premium, if any, and interest thereon, shall be limited obligations of the Issuer payable solely from the Revenues derived from the Agreement (except to the extent paid out of moneys attributable to the Bond proceeds or the income from the temporary investment thereof and, under certain circumstances, proceeds from insurance and condemnation awards) and shall be a valid claim of the respective holders thereof only against the Bond Fund and other moneys held by the Trustee and the Revenues, which Revenues shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized in this Indenture. The Bonds and the coupons appertaining to the coupon Bonds are issued pursuant to the Act and shall not in any respect be a general obligation of the Issuer nor shall they be payable in any manner from funds raised by taxation. No Bonds issued by the Issuer under the Act may be general obligations of the Issuer, but are limited obligations of the Issuer, payable solely out of the revenues and receipts derived from the Agreement. The Bonds do not constitute an indebtedness of the Issuer or a loan of credit thereof within the meaning of any constitutional or statutory provisions.

**SECTION 2.4. Authentication.** No Bond and no coupon appertaining to any coupon Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder. Before authenticating or delivering any coupon Bonds, the Trustee shall detach and cancel all matured coupons, if any, appertaining thereto, and such cancelled coupons should be cancelled or otherwise destroyed by Trustee in accordance with Section 2.9.

SECTION 2.5. Form and Place of Payment of Bonds.

The Bonds issued under the Indenture and the coupons appertaining to the coupon Bonds shall be substantially in the form hereinabove set forth with such variations, omissions and insertions as are permitted or required by this Indenture.

The principal of, premium, if any, and interest on the coupon Bonds shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee in Fort Wayne, Indiana, or its successor in trust. Payment of interest on the coupon Bonds shall be made only upon presentation and surrender of the coupons representing such interest as the same respectively fall due.

Principal and premium, if any, of the fully registered Bonds shall be payable at the principal office of the Trustee, upon presentation and surrender of the Bonds as the same become due or, in the case of prepayment of a portion of the principal thereof, upon presentation of the Bonds for an appropriate endorsement in the Table of Prepayments appearing on such Bonds, provided that prepayment of any portion of the principal and premium, if any, of the Bonds may be made pursuant to a Home Office Payment Agreement. Interest shall be payable by check or draft mailed to the registered owners of Bonds at their address as they appear on the registration books kept by the Trustee as Bond Registrar, except as otherwise provided in Section 3.8.

The registered owner of any Bond may enter into a Home Office Payment Agreement between such owner and the Trustee if such agreement provides that such owner shall covenant and agree to make appropriate endorsements on such Bond for prepayments of portions of the principal and premium, if any, of such Bond and interest on the amount of principal so prepaid accrued to such prepayment date, prior to any transfer of such Bond. Such Home Office Payment Agreement may also contain provisions for prepayment of principal by wire transfer as provided in Section 3.8. Notwithstanding the above, payment of the entire remaining unpaid amount of principal of each Bond shall be made upon surrender thereof at the principal office of the Trustee.



SECTION 2.6. Delivery of Series 1980 Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee and the Trustee shall authenticate the Series 1980 Bonds and deliver them to the purchasers as directed by the Issuer as hereinafter in this Section provided.

Prior to the delivery by the Trustee of any of the Series 1980 Bonds there shall be filed with the Trustee:

1. A copy, duly certified by the City Clerk, of the proceedings of the Common Council of the Issuer authorizing the Agreement, the execution and delivery of the Mortgage and the Indenture and the issuance of the Series 1980 Bonds.

2. Original executed counterparts of this Indenture, the Agreement, the Note and the Mortgage.

3. A request and authorization to the Trustee on behalf of the Issuer and signed by two authorized officers of the Issuer to authenticate and deliver the Series 1980 Bonds to the purchasers therein identified upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such request and authorization plus accrued interest thereon to the date of delivery. The proceeds of such payment shall be paid over to the Trustee and deposited in the Bond Fund and the Construction Fund pursuant to Article V hereof.

4. An opinion of municipal bond counsel of nationally recognized standing, to the effect that interest paid on the Series 1980 Bonds will not be includable in the Federal gross income of the holders thereof for federal income tax purposes.

SECTION 2.7. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen, or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed (which new Bond shall have attached thereto coupons corresponding in all respects to those, if any, on the Bond mutilated, lost, stolen or destroyed); provided that, in the case of any mutilated Bond, such mutilated Bond together with all coupons (if any) appertaining thereto shall first be surrendered to the Issuer

and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with any indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses in this connection.

SECTION 2.8. Registration and Exchange of Bonds:  
Persons Treated as Owners. Title to any coupon Bond, unless such Bond is registered in the manner hereinafter provided, and to any interest coupon shall pass by delivery. The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee which is hereby constituted and appointed the Bond Registrar of the Issuer. At the option of the bearer, any coupon Bond may be registered as to principal only on such books upon presentation thereof to the Trustee which shall make notation of such registration thereon. Any coupon Bond registered as to principal only may thereafter be transferred only upon an assignment duly executed by the registered owner or his attorney duly authorized in writing in such form as shall be satisfactory to the Trustee, such transfer to be made on such books and endorsed on such Bond by the Trustee. Such transfer may be to bearer and thereby transferability by delivery shall be restored, subject, however, to successive registrations and transfers as before. The principal of any Bond registered as to principal only, unless registered to bearer, shall be payable only to or upon the order of the registered owner or his legal representative, but the coupons appertaining to any coupon Bond registered as to principal only shall remain payable to bearer notwithstanding such registration. Upon surrender for transfer of any fully registered Bond without coupons at the principal corporate trust office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds without coupons for a like aggregate principal amount.

Fully registered Bonds without coupons may be exchanged at the principal corporate trust office of the Trustee for a like aggregate principal amount of coupon Bonds of the same series and maturity, or for a like aggregate principal amount

of fully registered Bonds without coupons of the same series and maturity of other authorized denominations, and coupon Bonds may be exchanged at the principal corporate trust office of the Trustee for a like aggregate principal amount of fully registered Bonds without coupons of the same series and maturity of authorized denominations. All coupon Bonds surrendered for exchange and delivered in exchange shall have attached thereto all unmatured coupons appertaining thereto (together with any matured coupons in default appertaining thereto). The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding. The execution by the Issuer of any fully registered Bond without coupons of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such registered Bond.

The Trustee shall not be required to transfer or exchange any fully registered Bond or coupon Bond registered as to principal only during the period of fifteen days next preceding any interest payment date of such Bond nor to transfer or exchange any Bond after the first publication or the mailing of notice calling such Bond or portion thereof for redemption has been given as herein provided, nor during the period of fifteen days next preceding the giving of such notice of redemption.

As to any coupon Bond registered as to principal only (other than to bearer) or as to any fully registered Bond the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of any such coupon Bond registered as to principal only or payment of either principal or interest on any fully registered Bond without coupons shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. The Issuer and the Trustee may deem and treat the bearer of any coupon Bond which shall not at the time be registered as to principal (or which shall be registered to bearer), and the bearer of any coupon appertaining to any coupon Bond, whether such Bond shall be registered as to principal or not, as the absolute owner of such Bond or coupon, as the case may be, whether such Bond or coupon shall be overdue or not, for the purpose of receiving payment thereof and for all

other purposes whatsoever, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

In each case the Trustee shall require the payment by the Bondholder requesting exchange or transfer, of any tax or other governmental charge required to be paid with respect to such exchange or transfer, but otherwise no charge (other than the actual cost of printing any Bonds required to accomplish such exchange or transfer) shall be made to the Bondholder for such exchange or transfer.

**SECTION 2.9. Cancellation of Bonds.** Whenever any outstanding Bond or any coupon appertaining thereto shall be delivered to Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount or interest represented thereby, or for replacement pursuant to Section 2.7 or if a matured coupon shall be detached prior to authentication of the Bonds pursuant to Section 2.4, such Bond and coupon shall be promptly cancelled and destroyed by the Trustee and counterparts of a certificate of destruction evidencing such cancellation and destruction shall be furnished by the Trustee to Issuer and the Company.

**SECTION 2.10. Issuance of Additional Bonds.** So long as the Agreement is in effect, one or more series of Additional Bonds may be authenticated and delivered for the purposes set forth in Section 3.2(b) of the Agreement. The Additional Bonds of each such series shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of said sale of Additional Bonds, they shall be delivered by the Trustee to or upon the order of the purchasers thereof, but only upon there being filed with the Trustee:

1. A written statement by the Company approving (a) the issuance and delivery of such Additional Bonds and agreeing that the amounts payable under Section 4.2 of the Agreement shall be computed so as to include such Additional Bonds to the same extent as is therein provided with respect to the Series 1980 Bonds, (b) the execution and delivery of a supplement to the Mortgage subjecting to the lien thereof all property to be financed with the proceeds of such Additional Bonds, and (c) any other matters to be approved by the Company pursuant to Section 3.2 of the Agreement and this Section 2.10.

2. A copy, duly certified by the City Clerk of the Issuer, of the proceedings theretofore duly adopted by the Common Council of the Issuer authorizing the execution and delivery of such supplement to the Agreement and such supplemental indenture and the issuance of such Additional Bonds.

3. A request and authorization to the Trustee on behalf of the Issuer and signed by two authorized officers of the Issuer to authenticate and deliver such Additional Bonds to the purchasers therein identified upon payment to the Issuer of a sum specified in such request and authorization plus accrued interest thereon to the date of delivery. Such proceeds shall be paid over to the Trustee and deposited to the credit of the Bond Fund and Construction Fund as hereinafter provided under Article V hereof.

4. A ruling of the Internal Revenue Service or an opinion of municipal bond counsel of nationally recognized standing to the effect that the issuance and sale of the Additional Bonds will not result in interest on the Series 1980 Bonds becoming includable in the gross income of the holders thereof for Federal income tax purposes.

Each series of Additional Bonds issued pursuant to this Section shall be equally and ratably secured under the Indenture with the Bonds now being issued and all other series of Additional Bonds, if any, issued pursuant to this Section, without preference, priority or distinction of any Bonds or coupons over any other thereof, but shall bear such date or dates, bear interest at such rate or rates, mature on such date or dates and be subject to redemption on the dates and at such premiums, and be issued at such prices as shall be approved in writing by the Issuer and the Company.

Notwithstanding anything herein to the contrary no Additional Bonds shall be issued unless the Agreement is in effect and there is no default at the time of issuance under the Agreement, the Mortgage or this Indenture.

### ARTICLE III

#### REDEMPTION OF BONDS BEFORE MATURITY

##### SECTION 3.1. Certain Redemption Dates and Prices.

The Series 1980 Bonds are non-callable for redemption prior to March 1, 1990 except in the event (1) the Company shall be obligated to prepay installments payable under the Agreement with respect to the Series 1980 Bonds and to cause the Series 1980 Bonds to be redeemed as provided in Section 7.1 of the Agreement upon the occurrence of a Determination of Taxability, or (2) the Company shall elect to exercise its option to prepay installments payable under the Agreement and to cause the Series 1980 Bonds to be redeemed as provided in Section 7.2 of the Agreement. If called for redemption as a result of a Determination of Taxability as referred to in (1) above, the Series 1980 Bonds shall be subject to redemption by the Issuer at any time as a whole at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date plus,

(1) the interest paid and payable on the Series 1980 Bonds for the Inclusion Period, plus

(ii) an additional amount (expressed as a percentage of the principal amount), computed as follows:

<u>Date of Redemption</u>	<u>Additional Payment (Percentage of Principal Amount)</u>
Before March 1, 1981	105%
March 1, 1981 - February 28, 1982	104
March 1, 1982 - February 28, 1990	103
March 1, 1990 and thereafter	100

If called for redemption as a result of the event referred to in (2) above, the Series 1980 Bonds shall be subject to redemption by the Issuer at any time in whole, but not in part, at 100% of the principal amount redeemed plus accrued interest to the redemption date.

Any person who was a Series 1980 Bondholder both at the time of an Event of Taxability and at the maturity or redemption of such Bond prior to a redemption due to a

Determination of Taxability shall, upon presentation to the Trustee in writing of proof satisfactory to the Trustee that he was a holder of such Bond at such times, be entitled to the premium described in the foregoing paragraph for the Inclusion Period. Any moneys deposited and held by the Trustee for the benefit of such claimants, if any, for five years after the date upon which so deposited shall be repaid to the Company and thereupon and thereafter no such claimant shall have any rights to or in respect of such moneys.

The Series 1980 Bonds are also subject to redemption by the Issuer at the option of the Company prior to maturity on any interest payment date on or after March 1, 1990 in whole or in part (less than all of such Bonds to be selected by lot in such manner as may be designated by the Trustee), at the redemption prices (expressed as percentages of principal amount) set forth in the table below plus accrued interest to the redemption date:

<u>Redemption Date</u> <u>(Dates inclusive)</u>	<u>Redemption Price</u>
March 1, 1990 through February 28, 1991	103.00
March 1, 1991 through February 29, 1992	102.80
March 1, 1992 through February 28, 1993	102.60
March 1, 1993 through February 28, 1994	102.40
March 1, 1994 through February 28, 1995	102.20
March 1, 1995 through February 29, 1996	102.00
March 1, 1996 through February 28, 1997	101.80
March 1, 1997 through February 28, 1998	101.60
March 1, 1998 through February 28, 1999	101.40
March 1, 1999 through February 29, 2000	101.20
March 1, 2000 through February 28, 2001	101.00
March 1, 2001 through February 28, 2002	100.80
March 1, 2002 through February 28, 2003	100.60
March 1, 2003 through February 29, 2004	100.40
March 1, 2004 through February 28, 2005	100.20

The Issuer shall direct the Trustee to call the Bonds for optional redemption when and only when it shall have been notified by the Company to do so and the Company has itself notified the Trustee of a corresponding payment under the Agreement. The Issuer shall furnish the Company with a copy of its notification to the Trustee.

Bonds shall be called for redemption by the Trustee as herein provided upon receipt by the Trustee at least forty-

five days prior to the redemption date of a resolution of the Issuer providing for such redemption. Such resolution shall specify the principal amount of the Bonds and their maturities so to be called for redemption, the applicable redemption price or prices and the provision or provisions above specified pursuant to which such Bonds are to be called for redemption. The foregoing provisions of this paragraph shall not apply in the case of any redemption of Bonds pursuant to a sinking fund redemption with respect to any Bonds issued hereunder, and such Bonds shall be called by the Trustee for redemption pursuant to such sinking fund without the necessity of any action by the Issuer and whether or not the Trustee shall hold in the Bond Fund moneys available for and sufficient to effect the required redemption.

**SECTION 3.2. Partial Redemption of Fully Registered Bonds.** In the case of a partial redemption of Bonds by lot when fully registered Bonds of denominations greater than \$500 are then outstanding, then for all purposes in connection with redemption, each \$500 of face value shall be treated as though it was a separate Bond of the denomination of \$500. If it is determined that one or more, but not all of the \$500 units of face value represented by any fully registered Bond is to be called for redemption, then upon notice of intention to redeem such \$500 unit or units, the owner of such fully registered Bond (except a fully registered Bond which is subject to a Home Office Payment Agreement) shall forthwith surrender such Bond to the Trustee (1) for payment of the redemption price (including the premium, if any, and interest to the date fixed for redemption) of the \$500 unit or units of face value called for redemption and (2) for appropriate notation of such partial redemption by the Trustee in the Table of Prepayments appearing on such Bond. If the owner of any such fully registered Bond of a denomination greater than \$500 shall fail to present such Bond to the Trustee for payment and notation as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of the \$500 unit or units of face value called for redemption (and to that extent only); interest shall cease to accrue on the portion of the principal amount of such Bond represented by such \$500 unit or units of face value on and after the redemption date and (funds sufficient for the payment of the redemption price having been deposited with the Trustee, and being available for the redemption of said unit or units on the redemption date) such Bond shall not be entitled to the benefit or security of this Indenture to the extent of the portion of its principal amount (and accrued interest thereon to the redemption date) represented by such



\$500 unit or units of face value nor shall new Bonds be thereafter issued corresponding to said unit or units. Bonds shall be redeemed only in the principal amount of \$500 each or any integral multiple thereof.

**SECTION 3.3. Notice of Redemption.** Notice of the call for any redemption, identifying the Bonds to be redeemed, shall be given by the Trustee by publication at least twice in a newspaper or financial journal of general circulation published in the City of New York, New York, the first of which shall be published not less than thirty days prior to the redemption date, and in the case of the redemption of Bonds at the time registered as to principal (except to bearer) or fully registered, upon mailing a copy of the redemption notice by registered or certified mail at least thirty days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed in whole or in part at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. If all of the Bonds to be redeemed are at that time registered as to principal (except to bearer) or fully registered, such notice shall be by mailing only in the manner specified by the preceding sentence; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bond or portion thereof with respect to which no such failure has occurred.

Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice.

If, because of the temporary or permanent suspension of the publication or general circulation of any newspaper or financial journal or for any other reason, it is impossible or impractical to publish such notice of call for redemption in the manner herein provided, then such publication in lieu thereof as shall be determined by the Trustee shall constitute a sufficient publication of notice.

**SECTION 3.4. Redemption Payments.** Prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of, the Bonds or portions thereof called, together with accrued interest thereon to the redemption date and any required premium. Upon the giving of notice and

the deposit of funds for redemption, interest on the Bonds or portions thereof thus called shall no longer accrue after the date fixed for redemption.

SECTION 3.5. Cancellation. All Bonds which have been redeemed in whole shall not be reissued but shall be cancelled and destroyed by the Trustee in accordance with Section 2.9.

SECTION 3.6. Unpaid Coupons. All unpaid interest coupons which appertain to coupon Bonds called for redemption and which shall have become payable on or prior to the date fixed for redemption shall continue to be payable to the bearers upon the presentation and surrender of such coupons.

SECTION 3.7. Sinking Fund. As and for a sinking fund for the retirement of a part of the Series 1980 Bonds, the repayment installments specified in the Note which are to be deposited in the Bond Fund at least one business day before each March 1 thereafter, to and including March 1, 2005 shall be sufficient to redeem (after credit as provided below) the following principal amounts of such Series 1980 Bonds on the dates set forth below:

<u>March 1</u> <u>of the Year</u>	<u>Principal</u> <u>Amount</u>
1996	\$ 25,000
1997	25,000
1998	25,000
1999	50,000
2000	50,000
2001	62,500
2002	87,500
2003	100,000
2004	200,000
2005	200,000

At its option, to be exercised on or before the forty-fifth (45th) day next preceding any such sinking fund payment date, the Issuer, or the Company on behalf of the Issuer, may (a) deliver to the Trustee for cancellation Series 1980 Bonds in any aggregate principal amount desired with all unmatured coupons attached, (b) receive a credit in respect of its sinking fund redemption obligation for any Series 1980 Bonds which prior to said date have been redeemed or purchased (otherwise than through the operation of the sinking fund) and cancelled by

the Trustee and not theretofore applied as a credit against any sinking fund redemption obligation or (c) making moneys available to the Trustee with which to purchase Series 1980 Bonds to be credited in like manner as the Series 1980 Bonds delivered under (a) and the Trustee shall proceed to effect such purchase if Series 1980 Bonds are available therefor. Each Series 1980 Bond so delivered or previously redeemed or purchased shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the Issuer on such sinking fund redemption date and any excess over such obligation shall be credited on future sinking fund redemption obligations in inverse order, and the principal amount of such Bonds to be redeemed by operation of the sinking fund shall be accordingly reduced.

The Issuer will, or the Company on behalf of the Issuer may, on or before the forty-fifth (45th) day next preceding each sinking fund redemption date furnish the Trustee and the Company with its certificate indicating whether or not and to what extent the provisions of clauses (a) and (b) of the preceding paragraph are to be availed with respect to such sinking fund payment and confirm that cash funds for the balance of the next succeeding prescribed sinking fund payment will be paid on or before the next succeeding March 1.

SECTION 3.8. Direct Payment. Notwithstanding any of the provisions of the Series 1980 Bonds or any other provision of this Indenture, in the case of any Series 1980 Bond registered in the name of, or held by, any holder of 10% or more of the unpaid principal amount of outstanding Series 1980 Bonds who has given written notice to the Trustee requesting that the provisions of this Section apply to such holder, the Trustee shall pay the principal (provided a proper Home Office Payment Agreement is in force for making endorsements on the Table of Prepayments set forth on the Bonds) of the Series 1980 Bonds (except upon the final maturity thereof) and premium, if any, and interest thereon, without any presentment thereof, directly to such holder at such address as such holder may from time to time designate in writing to the Trustee, in either case by wire transfer sent by the Trustee not later than 10:00 A.M. (Trustee's local time) on the due date in immediately available funds to any bank in the continental United States, if and as specified.

## ARTICLE IV

### GENERAL COVENANTS

SECTION 4.1. Payment of Principal, Premium, if any, and Interest. Issuer covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds and in the coupons appertaining to the coupon Bonds according to the true intent and meaning thereof. The principal and interest (except interest paid from the proceeds from the sale of the Bonds and accrued interest) and premium, if any, are payable by the Issuer solely from the Revenues and nothing in the Bonds or the coupons or this Indenture should be considered as assigning or pledging any other funds or assets of the Issuer other than such Revenues and the right, title and interest of the Issuer in the Agreement in the manner and to the extent herein specified.

SECTION 4.2. Performance of Covenants: The Issuer. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that except for the matters set forth in Section 4.1 the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Company or by the Trustee, or shall have received the instrument to be executed and at the Issuer's option shall have received from the Company or from the Trustee assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of Indiana, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture, to grant the security interest herein provided, to assign the Agreement, the Note and the Mortgage and to assign and pledge the Revenues in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof and the coupons appertaining to the coupon Bonds in the hands of the bearers thereof are and will be valid

and enforceable obligations of the Issuer according to the terms thereof and hereof.

SECTION 4.3. Right to Payments under Agreement; Instruments of Further Assurance. The Issuer covenants that it will cooperate with the Trustee in defending its right to the payment of amounts due from the Company under the Agreement (including the Note) to the Trustee, for the benefit of the holders and owners of the Bonds and the bearers of the coupons appertaining to the coupon Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the rights assigned hereby and the Revenues pledged and assigned hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein and in the Agreement and the Mortgage provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Revenues or its rights under the Agreement, the Note or the Mortgage.

SECTION 4.4. Recordation and Other Instruments. The Issuer covenants that it will cooperate with the Company in causing such security agreements, financing statements and all supplements thereto and other instruments as may be required, in the opinion of Independent Counsel, from time to time to be kept, to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the holders and owners of the Bonds, the bearers of the coupons appertaining to the coupon Bonds and the rights of Trustee hereunder, and to perfect the security interest in the Note and the Mortgage.

SECTION 4.5. Inspection of Project Books. The Issuer and the Trustee covenant and agree that all books and documents in their possession relating to the Project and the Revenues shall at all times be open to inspection by such accountants or other agencies as the other party may from time to time designate.

SECTION 4.6. List of Bondholders. The Trustee will keep on file a list of names and addresses of all holders of coupon Bonds who may request that their names and addresses be placed on said list by filing a written request with the Issuer or with the Trustee which request shall include a statement of the principal amount of Bonds held by such holder and the numbers of such Bonds. To said list the Trustee shall add the names and addresses of the holders of all Bonds which may from time to time be registered as to principal or fully registered on the registration books of the Issuer maintained by the Trustee as Bond Registrar, together with the principal amount and numbers of such Bonds. The Trustee shall be under no responsibility with regard to the accuracy of said list. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Company or by holders or owners (or a designated representative thereof) of 15% or more in principal amount of Bonds then outstanding, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

SECTION 4.7. Rights Under Agreement. The Agreement, a duly executed counterpart of which has been filed with the Trustee, sets forth the covenants and obligations of the Issuer and the Company, including provisions that subsequent to the issuance of Bonds and prior to their payment in full or provision for payment thereof in accordance with the provisions hereof the Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, and reference is hereby made to the same for a detailed statement of said covenants and obligations of the Company thereunder, and the Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder. Nothing herein contained shall be construed to prevent the Issuer from enforcing directly any and all of its rights under Sections 4.2(c) and 5.2 of the Agreement.

SECTION 4.8. Prohibited Activities. The Issuer covenants and agrees that it has not engaged and will not engage in any activities and that it has not taken and will not take any action which might result in its income becoming taxable to it or any interest on the Bonds becoming taxable to the recipients thereof under Federal income tax laws.

## ARTICLE V

### REVENUES AND FUNDS

SECTION 5.1. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder, are not general obligations of the Issuer but are special obligations payable solely from the Revenues, and as authorized by the Act and provided in the Agreement and in this Indenture.

The Project has been financed for the Company under the Agreement, and the Revenues are to be remitted directly to the Trustee for the account of the Issuer and deposited in the Bond Fund (hereinafter created). The Revenues are at least sufficient in amount to insure the prompt payment of the principal of, premium, if any, and interest on the Bonds, and the entire amount of said Revenues are hereby pledged and assigned to the payment of the principal of and interest and premium, if any, on the Bonds.

SECTION 5.2. Creation of Bond Fund. There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated "City of Fort Wayne, Indiana, Industrial Development Revenue Bond Fund (Keebler Company Project)", which is pledged and shall be used to pay the principal of, premium, if any, and interest on the Bonds.

SECTION 5.3. Payments into Bond Fund. There shall be deposited in the Bond Fund all accrued interest received at the time of the issuance and delivery of the Bonds. In addition, there shall be deposited into the Bond Fund, as and when received, (a) any amount in the Construction Fund directed to be paid into the Bond Fund under Section 5.8 or 5.9 hereof; (b) all Revenues and (c) all other moneys received by the Trustee under and pursuant to any of the provisions of the Agreement or the Mortgage which are required or which are accompanied by directions that such moneys are to be paid into the Bond Fund. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit, or cause to be paid to the Trustee for deposit in the Bond Fund for its account, sufficient sums from revenues and receipts derived from the Agreement promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable.

SECTION 5.4. Use of Moneys in Bond Fund. Except as provided in Section 5.12 hereof, moneys in the Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on the Bonds and for the redemption of the Bonds prior to maturity.

SECTION 5.5. Authorization to Trustee to Withdraw Bond Fund Moneys. Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, which authorization and direction the Trustee hereby accepts.

SECTION 5.6. Construction Fund. There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated "City of Fort Wayne, Indiana, Industrial Development Construction Fund (Keebler Company Project)", which shall be expended in accordance with the provisions of the Agreement.

SECTION 5.7. Payments into Construction Fund; Disbursements. The balance of the proceeds of the issuance and delivery of the Bonds remaining after the deduction provided by the first sentence of Section 5.3 hereof has been made shall be deposited in the Construction Fund.

Moneys in the Construction Fund shall be expended on orders signed by the Authorized Company Representative stating with respect to each payment to be made:

- (a) The requisition number;
- (b) The name and address of the person, firm or corporation to whom payment is due or has been made, which may include the Company;
- (c) The amount to be or which has been paid;  
and
- (d) That each obligation mentioned therein has been properly incurred, is a proper charge against the Construction Fund and has not been the basis of any previous requisition.

A copy of each such requisition shall be furnished to the Issuer. The Trustee is hereby authorized and directed to make each disbursement required by the provisions of the



Agreement and to issue its checks therefor. The Trustee shall keep and maintain adequate records pertaining to the Construction Fund and all disbursements therefrom, and after the Project has been completed and a certificate of payment of all costs is or has been filed as provided in Section 5.8 hereof, the Trustee shall file an accounting thereof with the Issuer and the Company.

SECTION 5.8. Completion of Project. The completion of the Project and payment or provision made for payment of the full Cost of the Project shall be evidenced by the filing with the Trustee of a certificate required by the provisions of Section 3.4 of the Agreement. Any balance remaining in the Construction Fund on the Completion Date shall be used in accordance with said Section 3.4.

SECTION 5.9. Transfer of Construction Fund. If the Company should prepay installments pursuant to Section 7.1 or Section 7.2 of the Agreement, any balance then remaining in the Construction Fund shall without further authorization be deposited in the Bond Fund by the Trustee.

SECTION 5.10. Non-presentment of Bonds or Coupons. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, or in the event any coupon shall not be presented for payment at the due date thereof, if funds sufficient to pay such Bonds or coupons shall have been made available to the Trustee, all liability of the Issuer for the payment of such Bond or coupon, as the case may be, shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the holder of such Bond, or the bearer of such coupon, as the case may be, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond or coupon. If the Trustee shall cancel and discharge this Indenture in accordance with the provisions of Article VIII hereof, such moneys then held by the Trustee shall be paid by it to the Company and thereafter the holder of such Bond or coupon shall look solely to the Company for payment and shall have a claim against the Company without liability for interest thereon for the amount so paid by the Trustee to the Company in respect of such Bond or coupon.

SECTION 5.11. Moneys to be Held in Trust. All moneys required to be deposited with or paid to the Trustee for account of the Bond Fund or the Construction Fund under any provision of this Indenture shall be held by the Trustee in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien or security interest created hereby.

SECTION 5.12. Repayment to the Company from Bond Fund. Any amounts remaining in the Bond Fund after payment in full of the Bonds (or provision therefor having been made in accordance herewith), the fees, charges and expenses of the Trustee and any Paying Agent, and all other amounts required to be paid hereunder or under the Agreement, shall be paid to the Company as provided in Section 8.5 of the Agreement and at such time the Note shall be cancelled and delivered to the Company.

SECTION 5.13. Additional Payments Under the Agreement. Pursuant to Section 4.2(b) of the Agreement the Company has agreed to pay as provided therein fees and expenses of the Trustee and any Paying Agent. All such additional payments received by the Trustee shall not be paid into the Bond Fund but shall be set up in separate accounts appropriately designated and shall be disbursed by the Trustee solely for the purposes for which said additional payments are received. The Trustee hereby agrees to establish such separate accounts and make such disbursements.

SECTION 5.14. Moneys Deposited Pursuant to Section 7.1 of the Agreement. Should the Company be required to prepay the Series 1980 Bonds as a result of the occurrence of a Determination of Taxability all moneys paid to the Trustee with respect to Bonds not outstanding upon the date of such prepayment shall be held by the Trustee in a separate account for the benefit of the holders of such Series 1980 Bonds. Any person who was a Series 1980 Bondholder both at the time of an Event of Taxability and at the maturity or redemption of such Bonds prior to a prepayment of Bonds pursuant to Section 7.1 of the Agreement shall, upon presentation to the Trustee in writing of proof satisfactory to the Trustee that he was a holder of such Bond at such times, be entitled to the premium set forth in the first paragraph of Section 3.1 hereof.

Any moneys so deposited with the Trustee shall be held for the benefit of such claimants, if any, for five years after the date so deposited shall be repaid to the Company and thereupon and thereafter no such claimant shall have any rights to or in respect of such moneys.

## ARTICLE VI

### INVESTMENT OF MONEYS

SECTION 6.1. Investment of Moneys. Any moneys held as part of the Construction Fund or the Bond Fund shall be invested and reinvested by the Trustee in accordance with the provisions of Section 3.5 of the Agreement. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund for which they were made. The interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investments shall be charged to such fund. The Trustee shall sell and reduce to cash a sufficient amount of such investments of the Construction Fund whenever the cash balance in the Construction Fund is insufficient to pay a requisition when presented or of the Bond Fund whenever the cash balance in the Bond Fund is insufficient to pay the principal of, premium, if any, and interest on the Bonds when due.

## ARTICLE VII

### SUBORDINATION

Unless an event of default under the Agreement shall have occurred and be continuing, this Indenture and the rights and privileges hereunder of the Trustee and the holders of the Bonds are specifically made subject and subordinate to the rights and privileges of the Company set forth in the Agreement. The Trustee agrees that it shall execute and deliver any instrument necessary or appropriate at any time to confirm or evidence such subordination to enable the Company to enjoy such rights and privileges.

ARTICLE VIII  
DISCHARGE OF LIEN

If the Issuer shall pay or cause to be paid, or there shall be otherwise paid or provision for payment made to or for the holders and owners of the Bonds and coupons appertaining thereto the principal, premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall not then be in default in any of the other covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, and shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to Issuer such instruments in writing as shall be requisite to cancel and discharge the lien hereof, and reconvey, release, assign and deliver unto the Issuer any and all the estate, right, title and interest in and to any and all property conveyed, assigned or pledged to the Trustee or otherwise subject to the lien of this Indenture, except amounts in the Bond Fund required to be paid to the Company under Section 5.12 hereof and moneys or securities held by the Trustee for the payment of the principal of, premium, if any, and interest on the Bonds.

Any Bond shall be deemed to be paid within the meaning of this Article when payment of the principal of and premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Governmental Obligations (provided that such deposit will not affect the tax-exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as arbitrage bonds within the meaning of Section 103(c)(2) of the Code) maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and any Paying Agent pertaining to the Bonds with respect to which such deposit is made and all other liabilities of the Company under the Agreement

shall have been paid or the payment thereof provided for to the satisfaction of it. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys of Governmental Obligations.

Notwithstanding the foregoing, in the case of Bonds which by their terms may not be redeemed prior to the stated maturities thereof, no deposit under clause (ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid:

(a) as to any such Bonds as are not at the time of the making of such deposit redeemable within the next succeeding 60 days in accordance with the provisions of this Indenture until either (1) such Bonds shall have been irrevocably called or designated for redemption on the first date thereafter such Bonds may not be redeemed in accordance with the provisions of this Indenture or (2) until the respective stated maturities thereof;

(b) as to any such Bonds as are at the time of the making of such deposit redeemable within the next succeeding 60 days in accordance with the provisions hereof, until (1) the date fixed for their redemption or (2) the respective stated maturities thereof; and

(c) as to all such Bonds which are to be redeemed prior to their respective stated maturities, until proper notice of such redemption shall have been previously published in accordance with Article III hereof or in the event said Bonds are not by their terms subject to redemption within the next succeeding 60 days, until the Company shall have given the Trustee on behalf of the Issuer, in form satisfactory to it irrevocable instructions to publish, as soon as practicable, in the manner prescribed by Article III hereof, a notice to the holders of such Bonds and coupons that the deposit required by (ii) above has been made with the Trustee and that said Bonds and coupons are deemed to have been paid in accordance with this Article and stating such maturity or redemption date upon which moneys are to be available

for the payment of the principal or redemption price, if applicable, on said Bonds.

Any moneys so deposited with the Trustee as provided in this Section may at the direction of the Company also be invested and reinvested in Governmental Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Governmental Obligations in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and premium thereon with respect to which such moneys shall have been so deposited, shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in that fund.

Anything in Article XI hereof to the contrary notwithstanding, if moneys or Governmental Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and the interest and premium, if any, thereon and such Bonds and the interest and premium, if any, thereon shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the holder of each of the Bonds and coupons affected thereby.

Anything to the contrary in this Article notwithstanding the lien of this Indenture shall not be discharged within 3 years from the date of the issuance of the Series 1980 Bonds or any Additional Bonds unless there shall first be deposited with the Trustee a certificate of a certified public accountant to the effect that in the opinion of said certified public accountant, the Company has not exceeded the limitations set forth in Section 103(b)(6)(D) of the Code.

#### ARTICLE IX

##### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

SECTION 9.1. Defaults: Events of Default. If any of the following events occur, it is hereby declared to constitute an "event of default":

(a) Default in the due and punctual payment of interest on any Bond and the continuation of such failure for five (5) days after written notice by the Trustee;

(b) Default in the due and punctual payment of the principal of, or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in the Bonds contained and failure to remedy the same after notice thereof pursuant to Section 9.12 hereof;

(d) The occurrence of an "event of default" under the Agreement.

SECTION 9.2. Acceleration. Upon the occurrence of an event of default the Trustee upon the written request of the holders of not less than twenty-five per cent in aggregate principal amount of Bonds then outstanding shall, by notice in writing delivered to the Issuer, declare the principal of all Bonds then outstanding and the interest accrued thereon to the date of such declaration immediately due and payable, and such principal, interest, and any premium the Issuer shall have become obligated to pay prior to such date, if any, shall thereupon become and be immediately due and payable. Upon any declaration of acceleration hereunder the Issuer and the Trustee shall immediately declare an amount equal to all amounts then due and payable on the Bonds to be immediately due and payable as liquidated damages in accordance with Section 6.2 of the Agreement and shall immediately exercise such rights as exist under the Agreement to declare all loan repayment installments payable under Section 4.2 of the Agreement to be immediately due and payable.

SECTION 9.3. Other Remedies: Rights of Bondholders. Upon the occurrence of an event of default the Trustee may, as an alternative, pursue any available remedy by suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds then outstanding.

If an event of default shall have occurred, and if requested so to do by the holders of at least twenty-five per

cent in aggregate principal amount of Bonds then outstanding and indemnified as provided in Section 10.1(1) hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section 9.3, as Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such default or event of default or acquiescence therein; and such right and power may be exercised from time to time as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

**SECTION 9.4. Right of Bondholders to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the holders of a majority in aggregate principal amount of the Bonds then outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**SECTION 9.5. Appointment of Receivers.** Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the trust estate and of the revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.



SECTION 9.6. Waiver. Upon the occurrence of an event of default, to the extent that such rights may then lawfully be waived, neither the Issuer, nor anyone claiming through or under the Issuer, shall set up, claim, or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws.

SECTION 9.7. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment to the persons entitled thereto of all interest then due on the Bonds, and, if the amount available shall not be sufficient to pay said amount in full, then to the payment ratably, according to the amounts due, to the persons entitled thereto, without any discrimination or privilege; and

SECOND - To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full such unpaid principal and premium, due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declarations shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of Section 9.7(b) hereof in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of Section 9.7(a) hereof.

Whenever moneys are to be applied pursuant to the provisions of this Section 9.7, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid coupon or any Bond until such coupon or such Bond and all unmatured coupons, if any, appertaining to such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever the principal of, premium, if any, and interest on all Bonds has been paid under the provisions of this Section 9.7 and all expenses and charges of the Trustee have been paid, any balance remaining in the Bond Fund shall be paid to the Company as provided in Section 5.12 hereof.

SECTION 9.8. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds or coupons may be enforced by the Trustee without the possession of any of the Bonds or coupons or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the holders of the outstanding Bonds and the bearers of the outstanding coupons.

SECTION 9.9. Rights and Remedies of Bondholders. No holder of any Bond or coupon shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless also a default has occurred of which the Trustee has been notified as provided in Section 10.1(h) hereof, or of which by said subsection it is deemed to have notice, nor unless also such default shall have become an event of default and the holders of at least twenty-five per cent in aggregate principal amount of Bonds then outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name or names, nor unless also they have offered to the Trustee indemnity as provided in Section 10.1(l), nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds or coupons shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the holders of all Bonds then outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Bondholder

to enforce the payment of the principal of, premium, if any, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source and in the manner in the Bonds and the coupons expressed.

SECTION 9.10. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

SECTION 9.11. Waivers of Events of Default. The Trustee shall waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal upon the written request of the holders of (1) a majority in principal amount of all the Bonds then outstanding in respect of which default in the payment of principal or interest, or both, exists, or (2) a majority in principal amount of all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein or (b) any default in the payment when due of the interest on any such Bonds unless prior to such waiver or rescission, all arrears of interest, with interest, to the extent permitted by law, as in the Bonds provided on overdue interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee, in connection with such default shall have been paid or provided for, and in cases of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

SECTION 9.12. Notice of Defaults under Section 9.1(c): Opportunity of The Issuer and The Company to Cure Such Defaults.

Anything herein to the contrary notwithstanding, no default under Section 9.1(c) hereof shall constitute an event of default until actual notice of such default by registered or certified mail shall be given to the Issuer and the Company by the Trustee or by the holders of not less than a majority in aggregate principal amount of all Bonds outstanding, and the Issuer and the Company shall have had ninety days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an event of default if corrective action is instituted within the applicable period and diligently pursued until the default is corrected; provided, that in no case shall such period for corrective action extend beyond 180 days after notice to correct such default.

With regard to any default concerning which notice is given to the Issuer and the Company under the provisions of this Section, the Issuer hereby grants the Company full authority for account of the Issuer to perform any covenant or obligation alleged in said notice to constitute a default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution.

ARTICLE X

THE TRUSTEE AND PAYING AGENTS

SECTION 10.1. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a prudent man would exercise or use in the circumstances in the conduct of his own affairs, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an event of default and after curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an event of default has occurred (which has not been

cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning its duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (except with respect to the certificate of Trustee endorsed on the Bonds), or for the recording or re-recording, filing or re-filing of or any instrument required to secure the Bonds, or for the validity of the execution by the Issuer of this Indenture, or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds and coupons secured hereby with the same rights which it would have if not the Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by the Mayor or City Clerk of the Issuer or the Authorized Company Representative under the Agreement as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in Section 10.1(h) hereof, or of which by Section 10.1(h) it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the City Clerk of the Issuer under the seal of the Issuer to the effect that an authorization in the form therein set forth has been adopted by the Issuer as conclusive evidence that such authorization has been duly adopted, and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or wilful default.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by Article IV or failure by the Issuer or the Company to file with the Trustee any document required by this Indenture or the Agreement to be so filed subsequent to the issuance of the Bonds, unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five per cent in aggregate principal amount of Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively

assume there is no default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and with regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 9.3 or 9.8 hereof the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.



SECTION 10.2. Fees, Charges and Expenses of the Trustee and Paying Agents. The Trustee and any Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee and any Paying Agent in connection with such services. Upon an event of default, but only upon an event of default, the Trustee and each Paying Agent shall have a first lien with right of payment prior to payment on account of principal of, premium, if any, and interest on any Bond upon the Trust Estate for the foregoing fees, charges and expenses incurred by it respectively.

SECTION 10.3. Notice to Bondholders if Default Occurs. If a default occurs of which the Trustee is by Section 10.1(h) hereof required to take notice or if notice of default be given as therein provided, then the Trustee shall promptly give written notice thereof by registered or certified mail to the owner of each Bond at that time registered as to principal (except to bearer) or fully registered and to each holder of Bonds then outstanding shown by the list of Bondholders required by the terms of Section 4.6 hereof to be kept at the office of the Trustee.

SECTION 10.4. Intervention by the Trustee. In any judicial proceeding to which Issuer is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the owners of at least twenty-five per cent of the aggregate principal amount of Bonds then outstanding.

SECTION 10.5. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and vested with all of the title to the trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 10.6. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice by registered or certified mail to the Issuer, the Company, the owner of each Bond at that time registered as to principal (except to bearer) or fully registered, and each holder of Bonds as shown by the list of Bondholders required by Section 4.6 hereof to be kept by the Trustee, and such resignation shall take effect at the end of such thirty days, or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer.

SECTION 10.7. Removal of the Trustee. The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, to the Issuer, and to the Company, and signed by the owners of a majority in aggregate principal amount of Bonds then outstanding.

SECTION 10.8. Appointment of Successor Trustee by Bondholders. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their duly authorized attorneys in fact, a copy of which shall be delivered personally or sent by registered mail to the Issuer. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing having a reported capital and surplus of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon customary terms.

SECTION 10.9. Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Issuer and the Company an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trust, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and

trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Each predecessor Trustee shall give a final accounting to the successor Trustee for all moneys, securities, properties and accounts in its possession. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, power and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where the Indenture shall have been filed or recorded.

SECTION 10.10. Designation and Succession of Paying Agents. The Trustee and any other banks or trust companies, if any, designated as Paying Agent or Paying Agents in any supplemental indenture providing for the issuance of Additional Bonds as provided in Section 2.10 hereof, shall be the Paying Agent or Paying Agents for the applicable series of Bonds.

Any bank or trust company with which or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Indenture. If the position of Paying Agent shall become vacant for any reason, Issuer shall, within thirty days thereafter, appoint such bank or trust company as shall be specified by the Company and located in the same city as such Paying Agent to fill such vacancy; provided, however, that if the Issuer shall fail to appoint such Paying Agent within said period, the Trustee shall make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in Section 10.1 hereof with respect to the Trustee insofar as such provisions may be applicable.

SECTION 10.11. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of Wisconsin) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of

litigation under this Indenture or the Agreement or the Mortgage, and in particular in case of the enforcement of any of them on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 10.11 are adapted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from Issuer be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by Issuer. In case any separate trustee or co-trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

## ARTICLE XI

### SUPPLEMENTAL INDENTURES

SECTION 11.1. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without consent of, or notice to, any of the Bondholders enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Indenture;

(b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee;

(c) To evidence the appointment of a separate trustee or a co-trustee or the succession of a new Trustee or Paying Agent hereunder; and

(d) To issue Additional Bonds as provided in Section 2.10 hereof.

SECTION 11.2. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 11.1 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the holders of not less than a majority in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing in this Section or in Section 11.1 hereof contained shall permit, or be construed as permitting (a) an extension of the maturity (or mandatory sinking fund or other mandatory redemption date) of the principal of, or the interest on, any Bond issued hereunder, or (b) a reduction in the principal amount of, or redemption premium or rate of interest on any Bond issued hereunder, or (c) a privilege or priority of any Bond or Bonds over any other Bond

or Bonds, or (d) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, or (e) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, except as hereinbefore expressly permitted, or (f) deprive the holder of any Bond then outstanding of the lien hereby created on the Trust Estate.

If at any time Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be published as shall be requested by the Issuer and in any event one time in a newspaper or financial journal of general circulation in the City of New York, New York. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Bondholders. If, within sixty days or such longer period as shall be prescribed by the Issuer following the final publication of such notice, the holders of not less than a majority in aggregate principal amount of the Bonds outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

If, because of the temporary or permanent suspension of the publication or general circulation of any newspaper or financial journal or for any other reason, it is impossible or impractical to publish any notice required in this Section, then such publication in lieu thereof as shall be made by the Trustee shall constitute a sufficient publication of notice.

Anything herein to the contrary notwithstanding, and if the Company is not in default at such time, a supplemental indenture under this Article shall not become effective unless and until the Company shall have consented to the execution and delivery of such supplemental indenture. In this regard,

the Trustee shall cause notice of the proposed execution of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Company at least fifteen days prior to the proposed date of execution and delivery of any such supplemental indenture. The Company shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee does not receive a letter of protest or objection thereto signed by or on behalf of the Company on or before 4:30 o'clock P.M., Fort Wayne, Indiana Time, on the fifteenth day after the mailing of said notice.

## ARTICLE XII

### AMENDMENT OF AGREEMENT OR MORTGAGE

SECTION 12.1. Amendments, etc., to Agreement or Mortgage Not Requiring Consent of Bondholders. The Issuer and the Trustee shall without the consent of or notice to the Bondholders consent to any amendment, change or modification of the Agreement (including an assignment thereof), the Mortgage or the Exhibits thereto as may be required (i) by the provisions of the Agreement, the Mortgage or this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, (iii) to describe more fully or to amplify or correct the description of, or substitute for, any property subject to the Agreement or the Mortgage or intended so to be or (iv) in connection with the issuance of Additional Bonds pursuant to Section 2.10 hereof.

SECTION 12.2. Amendments, etc., to Agreement or Mortgage Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 12.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Agreement or the Mortgage without publication of notice and the written approval or consent of the holders of not less than a majority in aggregate principal amount of the Bonds at the time outstanding given as in this Section provided; provided, however, that nothing in this Section or in Section 12.1 herein contained shall permit or be construed as permitting (a) an extension of time for the payment of an amount due pursuant to Section 4.2(a) of the Agreement or (b) a reduction in the total amount due pursuant to Section 4.2(a) of the Agreement or (c) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental Agreement or supplement to the Mortgage. If at any time the Issuer and the Company shall

request the consent of the Trustee to any such proposed amendment, change or modification of the Agreement or the Mortgage, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be published in the same manner as provided by Section 11.2 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal corporate trust office of the Trustee for inspection by all Bondholders.

#### ARTICLE XIII

##### MISCELLANEOUS

SECTION 13.1. Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent documents and may be executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds or coupons transferable by delivery and the amounts and numbers of such Bonds, and the date of the holdings of the same, may be proved by a certificate, deemed by the Trustee to be satisfactory, executed by any trust company, bank or banker, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such banker, as the property



of such party, the Bonds or coupons therein mentioned. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a bank or trust company before taking any action based on such ownership. In lieu of the foregoing the Trustee may accept other proofs as it shall deem appropriate.

(c) The fact of ownership of Bonds registered otherwise than to bearer and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to Section 2.8 hereof.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

In determining whether the holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company or any affiliate of the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph (a) an "affiliate" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company; and for the purposes of this definition, and (b) "control", means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company or any affiliate of the Company.

SECTION 13.2. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto, and the holders of the Bonds and coupons, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders of the Bonds and coupons as herein provided.

SECTION 13.3. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

SECTION 13.4. Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, or sent by telegram, addressed as follows: if to the Issuer, at City-County Building, Main Street, Fort Wayne, Indiana 46802; if to the Trustee, at its address as first above written, Attention: Corporate Trust Department; and if to the Company, at One Hollow Tree Lane, Elmhurst, Illinois 60126, Attention: Treasurer. A duplicate copy of each notice required to be given hereunder by the Trustee to either the Issuer or the Company shall also be given to the other. The Issuer, the Company and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 13.5. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be in Fort Wayne, Indiana, a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close (and the Trustee is in fact closed), then payment of principal, premium, if any, or interest need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

SECTION 13.6. Action by Company. Wherever it is herein provided or permitted for any action to be taken by the Company, such action may be taken by the Authorized Company Representative under the Agreement unless the context clearly indicates otherwise.

SECTION 13.7. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 13.8. Applicable Provisions of Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Indiana.

SECTION 13.9. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

IN WITNESS WHEREOF, City of Fort Wayne, Indiana and Fort Wayne National Bank have caused this Indenture of Trust to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the day first above written.

CITY OF FORT WAYNE, INDIANA

[SEAL]

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

FORT WAYNE NATIONAL BANK,  
Trustee

[SEAL]

By \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Its \_\_\_\_\_

STATE OF INDIANA     )  
                              )  
COUNTY OF ALLEN     )

Before me, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_,  
1980, personally appeared the City of Fort Wayne, Indiana by \_\_\_\_\_  
and \_\_\_\_\_ its Mayor and City Clerk, respectively,  
and acknowledged the execution of the foregoing instrument.

Given under my hand and notarial seal, this \_\_\_\_ day  
of \_\_\_\_\_, 1980.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:  
\_\_\_\_\_

STATE OF INDIANA       )  
                              ) SS  
COUNTY OF ALLEN       )

Before me, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_,  
1980, personally appeared Fort Wayne National Bank by  
\_\_\_\_\_ and \_\_\_\_\_ its \_\_\_\_\_  
and \_\_\_\_\_, respectively, and acknowledged the execution  
of the foregoing instrument.

Given under my hand and notarial seal this \_\_\_\_ day  
of \_\_\_\_\_, 1980.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires: \_\_\_\_\_

MAR 11 1980

KEEBLER COMPANY

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, Keebler Company ("Company"), a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Indiana, hereby promises to pay to the order of City of Fort Wayne, Indiana ("Issuer") the principal amounts set forth in the following table and to pay interest on the unpaid principal balance hereof from the date of this Note at the rate of eight and five-eighths per cent (8-5/8%) per annum, in Federal or other immediately available funds, on or before 10:00 o'clock A.M., local time in Fort Wayne, Indiana, on September 1, 1980 and semiannually thereafter on each March 1 and September 1; and to pay on demand interest on any overdue principal and premium, if any, and (to the extent that such interest shall be legally enforceable) on any overdue interest at the rate of ten per cent (10%) per annum until paid:

<u>Principal</u> <u>Amount</u>	<u>Date Payment Due</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Date Payment Due</u> <u>(March 1)</u>
\$ 25,000	1996	\$ 62,500	2001
25,000	1997	87,500	2002
25,000	1998	100,000	2003
50,000	1999	200,000	2004
50,000	2000	200,000	2005

This Promissory Note is issued pursuant to the Financing Agreement dated as of March 1, 1980 ("Financing Agreement") between the Issuer and the Company and is issued in consideration of the loan made thereunder and to evidence the obligations of the Company set forth in Section 4.2(a) thereof. This Promissory Note is secured by a Mortgage and Security Agreement dated as of March 1, 1980 from the Company to the Issuer (the "Mortgage"). This Promissory Note and the Mortgage are to be pledged to Fort Wayne National Bank, as Trustee (the "Trustee"), in the Indenture of Trust dated as of March 1, 1980 from the Issuer (the "Indenture"), and payments hereunder are to be made directly to the Trustee for the account of the Issuer pursuant to such pledge. Such pledge is to be made as security for the payment of the hereinafter described Bonds and all of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein

as a part of this Promissory Note.

It is intended by the Company that the payments of principal, premium, if any, and interest hereon will be sufficient to enable the Issuer to pay when due the principal, premium, if any, and interest on its \$825,000 Industrial Development Revenue Bonds (Keebler Company Project), Series 1980 (the "Bonds"). Each payment of principal, premium, if any, and interest on this Note shall at all times be sufficient to pay the total amount of interest and principal (whether at maturity or upon redemption or acceleration) and premium, if any, payable on the Bonds on such date; provided that the Excess Amount (as hereinafter defined) held by the Trustee in the Bond Fund created under the Indenture on a payment date shall be credited against the payment due hereon on such date; and provided further that, subject to the provisions of the next succeeding sentence, if at any time the amount held by the Trustee in the Bond Fund should be sufficient (and remain sufficient) to pay at the times required the principal of, interest and premium, if any, on the Bonds then remaining unpaid, the Company shall not be obligated to make any further payments hereunder. Notwithstanding the provisions of the preceding sentence, if on any date the Excess Amount held by the Trustee in the Bond Fund is insufficient to make the then required payments of principal (whether at maturity or upon redemption or acceleration), interest and premium, if any, on the Bonds on such date, the Company shall forthwith pay such deficiency hereunder. The term "Excess Amount" as of any date shall mean the amount in the Bond Fund on such date in excess of the amount required for payment of the principal of the Bonds which have matured at maturity or on a redemption date, premium, if any, on such Bonds and past due interest in all cases where Bonds or coupons have not been presented for payment. The total payments to be made by the Company shall be sufficient to pay when due (whether upon maturity, redemption or acceleration) the principal, premium, if any, and interest on the Bonds.

This Promissory Note is entitled to the benefits and is subject to the conditions of the Financing Agreement. The obligations of the Company to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim or recoupment by reason of any default by the Issuer under the Financing Agreement or under any other agreement between the Company and the Issuer or out of any indebtedness or liability at any time owing to the Company by the Issuer or for any other reason.

This Promissory Note is subject to prepayment under the terms and conditions, and in the amounts, provided in Article VII of the Financing Agreement.

If an "event of default" occurs under Section 6.1 of the Financing Agreement, the principal of this Promissory Note may be declared due and payable in the manner and to the effect provided in Article VI of the Financing Agreement.

No recourse shall be had for the payment of this Promissory Note, or for any claim based hereon or on the Financing Agreement, against any officer, director or stockholder, past, present or future, of the Company as such, either directly or through the Company, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise.

All terms used in this Promissory Note which are defined in the Financing Agreement shall have the meaning assigned to them in the Financing Agreement.

IN WITNESS WHEREOF, Keebler Company has caused this Promissory Note to be duly executed, attested and delivered as of March 1, 1980.

KEEBLER COMPANY

[SEAL]

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Secretary



ENDORSEMENT

Without recourse, pay to the order of Fort Wayne National Bank, Fort Wayne, Indiana, as Trustee under an Indenture of Trust dated as of March 1, 1980, from the undersigned.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_  
Mayor